

**ERNEST W. NOLIN & ASSOCIATES**  
*General Stenographic Reporters*  
369 ELGIN AVE., MANCHESTER, N. H. 03104  
TELEPHONE: 623-6906

through June 30, 1968. PRESENT: a copy of the document  
that we found relating to For Midway Manufacturing  
Company, Bally Manufacturing  
to those two copies Corporation and Empire:

relating to a meeting Fitch, Even, Tabin & Ludeka,  
by Donald L. Welsh, Esq.,  
Meeting in New York 135 South LaSalle Street,  
Chicago, Illinois.

A. Beer, the author of the document - February 12, 1968  
For Atari, Inc.:

I have prepared a copy of the document for  
use. If you want to Flehr, Hohbach, Test, Albritton &  
Mr. Hollinger with Herbert, by Thomas O. Herbert,  
Esq., 160 Sansome Street,  
15th Floor, San Francisco,  
California.

here, otherwise we will assume that it came from  
the chronological file For Sanders Associates, Inc.,  
and Magnavox Company:

of Sanders Associates Theodore W. Anderson, Esq.,  
and James T. Williams, Esq.,  
77 West Washington Street,  
Chicago, Illinois.

Stenotype Reporter: record.)

Ronald J. Hayward

MR. FLANNERY: We will mark  
the document that Mr. MR. ANDERSON: Mr. Flannery,

before you begin, we completed a search of the  
Patent Department chronological file last night

and, as I mentioned yesterday, we did find the two  
letters that were sent to TelePrompter in this  
file dated April 9 and April 12, 1968. Our search

covered the chronological file from January 1, '68,

through June 30, 1968, and the only other document that we found relating to TelePrompter in addition to those two copies of letters was a memorandum relating to a meeting. It is entitled "Notes - Meeting in New York with I. Kahn, TelePrompter Corp.; R. Baer, E. Rubin and L. Etlinger - February 19, 1968." I have prepared a copy of that memorandum for your use. If you want to momentarily or briefly recall Mr. Etlinger with respect to it, you may. He is here, otherwise we will stipulate that it came from the chronological file of the Patent Department of Sanders Associates.

MR. FLANNERY: Off the record.

(Discussion off the record.)

MR. FLANNERY: We will mark the document that Mr. Anderson handed to me as Exhibit 60.

(Whereupon, Exhibit No. 60 was marked for identification.)

MR. FLANNERY: The parties have stipulated that Exhibit 60 was a contemporaneous

Q. memo made by Mr. Etlinger at or about the time of  
A. the meeting of February 19, 1968, and that in the  
Mr. Etlinger, if called back to the stand, would  
have no better recollection than as set forth  
Q. in this memo. document relate to?

A. To the reissue app. MR. ANDERSON: Yes, that is  
Q. agreed to, office action?

A. I can't recall that. It was a passing glance only.

RICHARD I. SELIGMAN

Q. Did you refer to any other document?  
called as a witness, having been previously sworn, was  
A. I looked at, briefly, at the reissue declaration.  
further examined and continued his testimony as follows:  
One of the reissue declarations.

Q. (Interrogatories by Mr. Flannery.)

Q. Mr. Seligman, you realize you are still under oath?

A. Yes. any documents shown to you?

Q. In preparation for your testimony yesterday and  
in preparation for your testimony today, did you  
A. review any documents? sent that I referred to,

A. I saw a couple of documents, shown to me.

Q. Would you identify those documents? u, were they

A. I believe it was some of the documents in the  
reissue applications. I am not even sure it is

A. that. I looked at a couple of things very quickly

Q. in one of the files. anything about those documents?

4 Q. What file? I can't. There was just a reference

A. In one of the patent files; I think it was in the  
reissue file, but I can't even recall it. It was

13 Q. just a quick glance at something.

5 Q. What did the document relate to?

14 A. To the reissue application, I believe.

6 Q. Was it an office action? You mean other

A. I can't recall that. It was a passing glance only.

7 Q. Did you refer to any other documents? In

A. I looked at, briefly, at the reissue declaration.

One of the reissue declarations. Not that I recall.

8 Q. Anything else? any documents this morning in

A. I don't believe so, testimony?

9 Q. Were any documents shown to you?

10 A. Yes, you identify those documents?

10 Q. Will you identify those documents? of the patents

A. It was the first document that I referred to,

17 Q. something which was briefly shown to me.

11 Q. The documents that were shown to you, were they

18 Q. documents which were of public record in the

A. Patent Office?

19 A. I believe so, any discussions with Mr. Atlinger

12 Q. Can you recall anything about those documents?

A. I should, but I can't. There was just some reference made to something in there and I was quickly shown something and that was all that I can recall.

13 Q. And when was this?

A. This was Tuesday.

14 Q. Were you shown any documents yesterday?

MR. ANDERSON: You mean other than by you during the testimony?

MR. FLANNERY: Yes. In preparation for your testimony.

THE WITNESS: Not that I recall.

15 Q. Were you shown any documents this morning in preparation for your testimony?

A. Very briefly.

16 Q. Will you identify those documents?

A. One of the printed copies of one of the patents in suit.

17 Q. Which patent?

A. I think it was the 285 patent.

18 Q. Any other documents?

A. No.

19 Q. Have you had any discussions with Mr. Etlinger concerning or in preparation for your testimony?

A. We have talked, but I wouldn't say that anything that we discussed was in preparation for my speech testimony. ~~her about their testimony.~~

20 Q. Did Mr. Etlinger discuss his testimony with you? ~~oh~~

A. Very briefly, he mentioned one or two things.

21 Q. What did he say to you? ~~FLANNERY: That is why I~~

A. I think he just mentioned a couple of answers that he gave to a couple of questions. ~~You should have~~

22 Q. What did he say? ~~e.~~

MR. ANDERSON: Well, I object, Counsel, I don't see that this is proper interrogation or relevant material. Well, Mr. Etlinger is a lawyer. Well, MR. FLANNERY: I think it is very relevant, Counselor, in that it may well show a collusion in testimony and I am trying to get that. ~~Mr. Etlinger.~~

MR. ANDERSON: I don't understand what you mean by a collusion in testimony, this witness is sworn to tell the truth and tell the truth as he knows it and until you can show that in any way that is not the case, I think this is an improper line of interrogation as I am. He is a lawyer, the fact MR. FLANNERY: Oftentimes, as as

there is an agreement entered into between counsel for the parties that the witnesses will not speak to each other about their testimony. On what grounds?

MR. ANDERSON: We have no such agreement in this case. Competent privilege, and

irrelevant, and I do. MR. FLANNERY: That is why I want to know what was said.

Q. When did you have them? MR. ANDERSON: You should have raised this before. Tuesday, yesterday.

Q. And Mr. Etlinger did? MR. FLANNERY: I am not talking about him speaking to you. A. Of questions that were

asked of him and me. MR. ANDERSON: Well, Mr. Etlinger is a lawyer. A. Well, I object and I instruct the witness not to answer the questions with regard to any discussions he had with Mr. Etlinger or with me or with Mr. Williams.

Q. Do you take the advice? MR. FLANNERY: I am asking with respect to what Mr. Etlinger told him about his answers during his deposition; I am not asking for any answers to you. A. Abandoned application as

deposition Exhibit D. MR. ANDERSON: Well, I think Mr. Etlinger is in the same category as I am. He is a lawyer; the fact that you chose to call him as

a witness does not destroy that fact and I think your questioning is improper.

MR. FLANNERY: On what grounds?

MR. ANDERSON: On the grounds of work product, attorney-client privilege, and irrelevant, and I instruct the witness not to answer.

Q. When did you have the conversation with Mr. Etlinger?

A. I had one Monday, Tuesday, yesterday.

Q. And Mr. Etlinger discussed his testimony with you?

A. He mentioned to me a couple of questions that were asked of him and the answers that he gave.

Q. What were those questions?

MR. ANDERSON: I object to the question and I instruct the witness not to answer.

Q. Do you take the advice of your counsel?

A. I sure do.

MR. FLANNERY: We will mark the file history of the abandoned application as deposition Exhibit 61 and the file history of the

Patent No. 3,728,480 as Exhibit No. 62.

A. Yes. (Whereupon, Exhibits 61 and

Q. And I will refer you 62 were marked from page 13,  
"Only applicant has identification.) now and

Q. Mr. Seligman, I will place before you the file  
history of the abandoned application, Serial  
No. 697,798, which is marked Exhibit 61, and please  
refer to the amendment which was written by you

A. filed in the Patent Office on February 27, 1970,

Q. and page 13 of that amendment. On receivers, what  
are you referring to MR. ANDERSON: I object to the

A. question only in that you seemed to have put a  
premise in it that this witness wrote page 13.

viewer. That would MR. FLANNERY: I think he  
testified to that yesterday, Counselor.

Q. Now, going down to MR. ANDERSON: With respect  
to this page? the Hermann, et al, teachings,  
whereas one apprised MR. FLANNERY: About the broad  
whole amendment. If there is any question, I will  
reask it. did you believe that statement to be  
accurate when you MR. ANDERSON: Well, the record

A. speaks for itself.

Q. Mr. Seligman, did you write this amendment? it is  
a question, not a statement, even though there is

A. Yes.

29 Q. And I will refer you to the statement on page 13, "Only applicant has come up with this new and unobvious use of television receivers by the home viewer. Applicant has conceived and now teaches a totally new idea." Did you believe that statement to be true when you wrote it?

A. Yes.

30 Q. When you referred to television receivers, what are you referring to or what did you refer to?

A. I think that is obvious by the statement itself. It says television receivers used by the home viewer. That would be television receivers in the viewer's home, I assume.

31 Q. Now, going down to the bottom of that page it states, "Given the Hermann, et al, teachings, whereas one apprised to the idea to use the broad ideas to generate movable spots on a television receiver," did you believe that statement to be accurate when you made it?

A. Yes.

MR. ANDERSON: I think it is a question, not a statement, even though there is

no question mark at the end.

32 Q. What did you mean by television receiver in that statement?

MR. ANDERSON: Well, I object to any questions about what the witness meant in a word or statement that he used in 1970 or thereabouts in any document that he wrote that has been filed. The document speaks for itself and his meaning is quite immaterial to the meaning that the words have and irrelevant to any issue in this lawsuit.

THE WITNESS: I think the words "television receiver" in this case were referring back to particular claims of the application where these words were set out.

33 Q. Did you mean a television receiver as used in the home?

A. Probably.

34 Q. Now, turn over to the amendment after final rejection which was filed on August 5, 1970, and, first of all, did you write that amendment?

MR. ANDERSON: Do you know what page of the file wrapper you are referring to, by

any chance?

MR. FLANNERY: Off the record.

(Discussion off the record.)

THE WITNESS: I have the

August 5, 1970, amendment.

35 Q. Did you write that amendment?

A. Yes, I did.

36 Q. On page 2 of the amendment, there is an indication that you had an interview with the examiners, is that correct?

A. Yes.

37 Q. Do you recall any other interviews with respect to this application?

A. Interviews with the examiner?

38 Q. Yes.

MR. ANDERSON: Would you read the question, please?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: No.

39 Q. This indicates that the interview took place on  
July 30, 1970, is that correct?

A. That is what it indicates.

40 Q. Do you have any reason to doubt that?

A. No.

41 Q. Who was present at that interview?

A. If this is the only interview which took place,  
and I haven't gone through the file to see if other  
ones have taken place; but if this is the only  
one that took place, I do remember in addition to  
myself, Mr. Baer and Mr. Etlinger being present.

42 Q. What examiners were present?

A. It was MR. ANDERSON: "If you recall.

MR. FLANNERY: That is all  
we are ever asking him on a question, Mr. Anderson,  
if he recalls. If he doesn't recall, he can't  
answer.

THE WITNESS: Certainly the  
record indicates on the paper that Mr. Stout and  
Mrs. Murray.

43 Q. Do you recall Mr. Stout and Mr. Murray being there?

A. Mr. Stout was the examiner, so certainly he was  
there and I have a vague recollection of Mr. Murray.

In fact, let's cancel that. It now comes back to me that I had a talk with Mr. Murray at that interview, yes, he was there. Additionally, there were other examiners present.

Q. Did you bring any documents along to this interview, and, by you, I mean Mr. Baer, Mr. Etlinger or you?

A. I have no specific recollection, but certainly I believe that I brought documents.

Q. Do you recall what documents?

A. I can't recall. I certainly would have brought a copy of the application, the office action, perhaps an amendment.

Q. Was it your practice at that time to bring along a proposed amendment?

A. I wouldn't say that, I would say in some cases I do and in some cases I don't, depending upon the application.

Q. Any other documents?

A. I don't believe so.

Q. Did you bring along any proposed claims?

A. I don't recall.

Q. Would your files indicate what documents you brought along?

A. Possibly. I don't recall, looking through them yesterday, but I wasn't looking for that in particular, so I don't know.

50 Q. Did you or Mr. Baer or Mr. Etlinger bring anything else along to the interview?

A. Yes.

51 Q. What else?

A. We brought along a television set and a game-playing device.

52 Q. Would you describe the game-playing device?

A. I don't recall, which of the ones that are presented in this room was brought to that interview.

53 Q. Do you recall anything about the device that was brought to the interview?

A. Yes, it was a device for putting spots on a TV, for moving them around.

54 Q. Did it have the bounce feature?

MR. ANDERSON: Well, I object to the question on the ground that it lacks a foundation. What do you mean by the bounce feature?

THE WITNESS: Which bounce

55 A. feature? It certainly was made clear to him what

Q. Well, what does bounce feature mean to you?

A. Bouncing off players, walls, edges of the screen.

56 Q. Did it have bounce feature?

A. They are separate features, they are not the same.

57 Q. How do you distinguish them?

A. Just the way I said, bounce off a player, off a wall or off the edge of the screen, they are different bounce features.

58 Q. All right; did it have the bounce off the player feature?

A. I believe it did.

59 Q. Did it have the bounce off the wall feature?

A. I don't believe it did.

60 Q. Did it have the bounce off the edge feature?

A. I don't believe it did.

61 Q. So it only had the bounce off the player feature?

A. I think it did, yes.

62 Q. Is that feature disclosed in the application?

A. No, it isn't.

63 Q. So you were showing the examiner a device that included a feature that wasn't included in the application?

A. Yes; but it certainly was made clear to him what the application covered in that equipment.

64 Q. In that connection, what did you tell the examiner?

A. I am sure we told him what was covered by or what we were attempting to cover by this particular patent application and we did mention to him that there were other patent applications directed to other features. I don't remember the exact conversation.

65 Q. What do you recall about the conversation?

A. I recall we discussed the invention in general without getting into specifics of the claims, that we conducted a demonstration of the apparatus. That Mr. Stout agreed, yes, in fact there was an invention and then we discussed how to go about claiming that invention, and I believe I had a conversation with Mr. Murray to definitize some claim language which would be allowable.

66 Q. And can you relate anything more about the conversation with Examiner Murray?

A. No, I can't.

67 Q. Did Examiner Murray suggest the language to be added to the claims?

A. I don't believe so.

68 Q. Did you explain to Examiner Murray and Examiner Stout that the circuitry in the device that you showed him was different than the circuitry in the application which was the 798 application?

Examiners said to me MR. ANDERSON: I object to the question as lacking a foundation.

Interview. THE WITNESS: If the circuitry was in fact different, we certainly pointed out to him that what was demonstrated was not or included more than what was in this present application. He was well aware of the bounds of the application. I had a very long conversation with him; he was very, very familiar with the application. He felt that I was.

69 Q. That was Examiner Murray?

A. Examiner Stout. playing cards on a television set.

70 Q. How do you know that he was very familiar with the subject matter of the application?

A. By conversations we had with him. He was very much impressed with it. He was sure that there was a real solid invention here and, if I recall correctly, his biggest hangup was how do we go about definitizing this invention in the claims.

71 Q. Did he state in words or effect that it was a  
solid invention?

A. He was impressed with the invention. As I say,  
I cannot recall specific things that either of the  
examiners said to me or that I said to them. I just  
recall the generalities of what went on at that  
interview.

72 Q. How do you know he was impressed with the invention?

A. I got that impression. As I say, I can't recall  
the language.

73 Q. You can't recall the language?

A. I know he asked other examiners to take a look at  
the invention because he thought it was something.  
It was just that strong feeling that I got.

74 Q. Because it had the bounce feature?

A. No, the idea of playing games on a television set.

75 Q. What game did you show the examiner?

A. I don't recall.

76 Q. Was it a game that you utilized the bounce feature?

A. We may have showed him that game among others.

77 Q. You showed him more than one game?

A. I am sure we did.

78 Q. How many games did you show him?

A. I don't recall.

79 Q. Do you recall any game?

A. No.

80 Q. Do you recall anything about - do you recall any  
of your conversation with respect to telling the  
examiner that the application was directed to  
different circuitry than the circuitry of the  
device that was being shown to him?

A. I can't recall the specifics of our conversation.

81 Q. Do you recall whether or not the device that  
you showed the examiner was the latest form of  
the TV game available at Sanders at that time?

A. I have no belief in that matter.

82 Q. Did anything else occur at the interview other than  
what you have testified to previously?

A. Not that I recall.

83 Q. How long was the interview?

A. I'd say it was relatively lengthy, but I couldn't  
put a time limit. It was longer than interviews  
I normally have because of the demonstration,  
because Mr. Stout was showing it to other examiners,  
because of the additional conversation with  
Mr. Murray.

84 Q. What did Mr. Baer do during the interview?

A. I am sure he ran the demonstration and I would also believe that he would have commented on the invention. That, I will ask you to read the second

85 Q. Do you recall any statements by Mr. Baer?

A. No, nothing.

86 Q. Do you recall whether the TV set was a color TV set on a black-and-white TV set?

A. I believe it was a black-and-white TV set.

87 Q. Do you recall the names of any of the other examiners that were present during the demonstration?

A. No, I don't.

88 Q. Were they from the same Patent Office group or division?

A. I believe so. They were people that had offices in the same general area. I have some vague recollection that an examiner of one of the later cases was there, but it is a very vague recollection.

89 Q. Mr. Trafton?

A. Mr. Trafton, but I wouldn't swear to that.

90 Q. Mr. Seligman, I refer you back to the office action of May 26, 1970, and page 2 of that office action would it be the examiner's name, and the

The examiner will appear a reference to the conversion

A. May 26?

Q. 1970.

A. I have it.

Q. Page 2 of that, I will ask you to read the second paragraph on that page which we will copy into the record at this point and I will ask you if you agreed with the examiner with respect to his statements in that paragraph? text and it could be misle-

(Whereupon, the second paragraph is being reproduced testimony of this witness as follows:)

Q. What is the  
"The examiner has carefully  
noted the applicant's remarks concerning the  
unobviousness of converting an oscilloscope-type  
display to a raster display such as the type used

in a television receiver. The applicant should note  
matter of converting the record. It is structure  
that any modern oscilloscope provides means for  
converting the display into a raster-type display.

This is done by supplying a sawtooth deflection  
voltage to the Y axis. Further, the Z axis input  
have you read that paragraph, Mr. Sullivan, which  
controls the modulation of the beam intensity.

appeared on page 2 of the office action of  
This is notoriously common, but if the applicant  
May 26, 1970, the second paragraph?  
would like the examiner to cite a reference, then

the examiner will supply a reference. The conversion

from an oscilloscope-type display to a raster-type display or the inverse is an obvious design choice."

MR. ANDERSON: Mr. Flannery, I object to the transcribing verbatim of a fragment of an eight-page paper before the proceedings of the Patent Office. The paper in turn being a fragment from the total file wrapper. The fragment is taken out of context and it could be misleading and has no place in this record which is the testimony of this witness.

MR. FLANNERY: That is the purpose of cross-examination, Mr. Anderson. You can correct therecord any time you want to by cross-examination.

MR. ANDERSON: It is not a matter of correcting the record. It is structured to be misleading with forcing the reporter to reproduce from the document a portion out of context, that is all.

Q. Have you read that paragraph, Mr. Seligman, which appeared on page 2 of the office action of May 26, 1970, the second paragraph?

A. Yes, that that could be done.

94 Q. Did you agree with the examiner's statements in that paragraph?

MR. ANDERSON: I object.

Any one in particular?

MR. FLANNERY: The whole paragraph.

THE WITNESS: I will have to read it a little more carefully.

MR. ANDERSON: The first statement is, "The examiner has carefully reviewed the examiner's remarks," are you asking the witness if the examiner carefully noted the examiner's remarks?

95 Q. Mr. Seligman, will you answer the question without the coaching of your counsel?

A. Well, getting to the first statement, my counsel's aid is very helpful because he is talking first of all about my remarks which I don't recall. So I don't know if I can agree that I even made certain of these remarks. Regarding the remarks directed to converting oscilloscopes into raster-type displays, I think the examiner is technically correct that this could be done. The remark

concerning converting an oscilloscope-type display to a raster display or the inverse as obvious design choice, I don't know what that means.

96 Q. Did you acquiesce in the examiner's rejection as voiced in that paragraph?

A. Did I acquiesce in his rejection?

97 Q. Yes, to invention.

MR. ANDERSON: Well, I object; I don't think that paragraph contains a rejection. I think your question lacks a foundation, is misleading and is actually erroneous. I think it isn't a rejection.

98 Q. Would you acquiesce in the statements made by the examiner? as to the invention?

A. Well, particularly the last sentence of converting an oscilloscope to a raster-type display is an obvious design choice, I don't see how I can acquiesce in that statement. A design choice for what?

99 Q. Is your testimony, then, that you don't know whether you acquiesced or not? as the claims were amended?

A. No, I am not saying that, I am saying that possibly I would agree that you could convert oscilloscopes

to raster scan displays.

100 Q. Is there anything in the amendment that you filed after that office action which indicates that you were rebutting that statement by the examiner?

A. I will have to read it. I would like to say that I don't see that the statement is that relevant to the invention.

101 Q. What do you mean by that statement?

MR. ANDERSON: If you mean something other than what you said. Are you suggesting, Counsel, that he means something other than what he said?

102 Q. Can you explain that a little further? What do you mean by relevant to the invention?

A. Whether you can convert an oscilloscope to a raster scan display has no relevance on this invention.

103 Q. What invention are you referring to?

A. The invention claimed in this application. The amendment has no specific remarks directed to that paragraph.

104 Q. Isn't it true that also the claims were amended to overcome that objection of the examiner by inserting the term "said control unit" and the term

"for synchronizing a television raster scan"and - - -

MR. ANDERSON: I object, are you reading from some document as you appear to be? Please point out, if you wish the witness to testify from the document, where you are reading from?

MR. FLANNERY: I am asking for his recollection.

MR. ANDERSON: Well, he can't even track the reference in the context you framed it.

THE WITNESS: My independent recollection doesn't recall any specific amendments to the claims specifically directed to that particular paragraph of the office action.

105 Q. All right; now, I will refer you to page 1 of the amendment after final rejection. Does that refresh your recollection that that amendment was made to overcome the rejection by the examiner that it was an obvious design choice to substitute a raster

A. scan for an oscilloscope?

110 A. No, it does not. That would refresh your recollection.

106 Q. Mr. Seligman, do you have any independent or the recollection as to the abandonment of the 798

application?

A. Yes, I do.

Q. Was it in fact abandoned?

A. Yes, would suggest that it was of the continuation

Q. Do you know the reasons for abandoning the 798 application?

A. Yes, reference to the prior art.

Q. What were they?

A. A reference came to my knowledge which, although, I believed to be irrelevant or relatively irrelevant, if there is such a possibility, presented a problem in that the claims or certain ones of the claims of the allowed application read on that reference and so we decided to abandon this application in favor of a continuation application to specifically amend the claims so as not to literally read on the reference.

Q. Do you recall what claims literally read on the reference?

A. I don't, at claim 31 and I am not really sure

Q. Is there anything that would refresh your recollection?

A. I could possibly look at the application for the continuation, it might, as to me, was amended and

112 Q. I will place before you the file history of the continuation application which has been marked Exhibit 62.

A. That would suggest that Claim 39 of the continuation - I am sorry, not 39. Yes, 39 was amended to remove the reference.

113 Q. The reference is the French Patent No. 1, 180,470?

A. It was a French patent and I remember the 1,180, but I don't remember the last three numbers. Yes, that is it.

114 Q. Any other claims?

A. There were other claims that were amended.

115 Q. Because of the French reference?

A. Yes. Whether they had to be amended, I wouldn't want to say that.

116 Q. What were those claims?

A. Claim 1, I believe, was amended.

117 Q. Any other claims, other than those that are - any other independent claims?

A. I am looking at Claim 31 and I am not really sure whether it was amended or not. Without comparing

A. it one claim by claim basis, I can't say for sure. Claim 1, it is clear to me, was amended and

Claim 39, it is clear to me, that it was amended.

Possibly Claim 44, but I can't say for sure without making a comparison. Possibly Claim 47, possibly Claim 48.

118 Q. Was there any other reason for filing the continuation and abandoning the parent application?

A. Any other reason?

119 Q. Other than to cite that reference?

A. Not that I recall.

MR. ANDERSON: I object, that is not his testimony, Counselor. His testimony was, I think, we can have it reread, to amend the claims.

MR. FLANNERY: So it didn't read upon that reference?

MR. ANDERSON: I understood that was his testimony.

MR. FLANNERY: Yes, and cite the reference.

MR. ANDERSON: Two things.

120 Q. Any other reason?

A. There is nothing else that comes to mind. I know a lot of thought was given to this and I can't

think of any other reason, how I can do

121 Q. When did you find out about this French reference?

A. I don't recall the date.

122 Q. Referring to the petition withdrawing the file history of the parent application, it states in there there was a newly discovered reference, is that correct?

A. Yes, the corresponding application in January,

123 Q. Do you have any idea of how long prior to the date of this petition to withdraw that you knew about this reference?

A. No, I don't.

124 Q. Isn't it correct that you knew about it for a year and a half prior to that date?

A. That I knew about it a year and a half prior to that date?

125 Q. Yes.

A. I don't say that that is a fact. There is always a possibility that that could have been in the file somewhere or like around or something like that. There is no reason in the world that I knew the contents of that French patent and its relevancy to the application, and didn't cite it.

because it certainly would have been done long before this because this caused us no end of grief.

We ended up paying issue fees and everything else.

We never would have let the case go this far if we knew the pertinency to this claim reference.

126 Q. Isn't it a fact that the claim was called to your attention in connection with the foreign prosecution of the corresponding application in January, 1970? That you examined the French reference and replied to the office action in April, 1970?

A. In what country? Attention at that date.

127 Q. In Sweden.

A. I don't know.

128 Q. Mr. Seligman, in your foreign prosecution, do you assign the same I.D. number to the foreign applications?

129 A. Generally not.

Q. Does D. E. 2401 refer to the corresponding application to the patent application 798?

A. Yes.

130 Q. I will refer you to a Swedish letter dated December 30, 1968, which has a receipt stamp on it of January 8, 1970, by the Sanders Patent Department; does that refresh your recollection that at that

time the French patent was called to your attention?

A. The letter refers to the French patent.

131 Q. So, then, in fact it was called to your attention at that time, which is January, 1970?

HP. ANDERSON: If you recall.

THE WITNESS: A specific recollection I don't have, and even the inference I can't say.

132 Q. Do you have any reason to believe that it wasn't called to your attention at that date as set forth in that letter from the Swedish associate?

A. On that date?

133 Q. Yes, shortly after that date.

A. Yes, for a fairly strong reason.

134 Q. What is that?

A. That generally when I receive office actions, I don't sit and read them before filing them away.

135 Q. But that does indicate that the French patent was called to the attention of the Sanders Patent Department on January 5, 1970, is that correct?

A. Yes, it is cited in that letter.

36 Q. And isn't it a fact that in the letter which you

replied to the office action which was April 10, 1970, you discussed that French reference and its applicability to the foreign counterpart of the parent application? Yes, letter; but was

A. Would you repeat the question?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: I assume you mean April 27.

Q. April 27 or 28, 1970?

A. I responded to that official letter and make some comments regarding the French patent.

Q. So, therefore, you knew about the French patent on April 27, 1970? For the letter and I don't think

A. Yes, in the file either. Anderson, we

Q. Why did you wait more than a year, then, to call that to the attention of the Patent Office and petition to withdraw the original application to the Patent Office stating that it was a newly discovered reference when you knew about it for about a year?

A. Looking through this file on the corresponding Swedish application, apparently I didn't have any specific details of the French patent at the time of the April 27, 1970, letter; but was merely making some general comments against it based upon some of the Swedish examiner's comments in his May 26, 1970, letter. Looking further through the file, I find that Sanders' Patent Department did not receive a translation of this French patent until February of 1971.

140 Q. Speaking of that, that letter refers to a letter of January 25, 1971, where is that letter?

A. It certainly isn't in chronological order in the file. Do you want me to go through the whole file and see if I can find it?

141 Q. Well, I am looking for the letter and I can't find it in the file either. Mr. Anderson, we would like you to produce a copy of that letter of

April 27, 1970, those comments.

A. Here it is, that's the letter.

142 Q. May I see it? A. Sure, to the Swedish examiner's

A. Yes, that's the letter.

MR. ANDERSON: I will point out

that it is in the file that you handed the witness.

MR. FLANNERY: Right, it was out of chronological order.

143 Q. Do you have any recollection as to why you waited more than a year and a half to cite it to the U. S. Patent Office?

MR. ANDERSON: Waited more than a year and a half from what?

MR. FLANNERY: From the date he knew of it.

THE WITNESS: As I said, I did not have a translation of that patent until February of 1971 and I filed a petition to withdraw from issue in March, '71, which is no more than a month.

143 Q. But you knew that the patent contained that in April, 1970?

A. I wouldn't say that.

144 Q. Well, you made these comments to the Swedish associate without knowing what was in the patent?

A. Probably. Responding to the Swedish examiner's few comments that he made regarding the patent.

145 Q. Well, you knew enough about the patent to state,

"This patent merely sets forth one of many schemes for placing markers on a cathode-ray tube," did you not?

A. I assume I knew enough of what to respond to that argument. I did not know the details of that patent sufficiently to realize its relevance to the U. S. application and clearly when I received the translation of that patent, the relevancy became obvious to me and with due speed, we cited it to the Patent Office and withdrew our application from issue. There was no benefit to Sanders Associates to not file that immediately. We were desirous of getting this case --

MR. FLANNERY: I will move to strike his latter statements as not responsive and we will mark the letter from Mr. Seligman to the Swedish associate dated April 27, 1970, as Exhibit 63.

(Whereupon, Exhibit 63 was marked for identification.)

Q. Mr. Seligman, I will place before you a document which has been marked Exhibit 63 and I will ask of you -- which purports to be a letter from you to the

Swedish associate dated April 27, 1970 - and I will ask you if you wrote that on or about the date it bears?

A. Yes, I did.

Q. Is your recollection MR. ANDERSON: It appears to be a copy of the letter.

MR. FLANNERY: Which we are allowed to use, Counselor, nowadays.

A. I have no objection. MR. ANDERSON: But it isn't the letter as you characterized it.

MR. FLANNERY: I assume it is a true copy.

Q. And you are saying MR. ANDERSON: But it is not the letter that you said it was.

MR. FLANNERY: If you want to provide the letter, we will use it.

Q. And you are saying MR. ANDERSON: I presume the letter is in Sweden, all I want to have is the

A. record accurate, it is not the letter.

MR. FLANNERY: I will stipulate to that, that it is not the original copy. And as you have noted that THE WITNESS: I have no reason to believe that I did not write that on or about the date indicated, April 27, 1970.

47 Q. Were the statements that you made in this letter true as of the date you wrote the letter?

A. I am sure I believed them true at that date.

48 Q. Is your recollection refreshed as to any other reasons than you have testified to for filing a petition to withdraw from issue the patent application?

A. I have no other recollection of any other reasons for withdrawing but that. I have a specific recollection that that was the reason why we withdrew it from issue.

49 Q. Did you have any conversations with people from Magnavox concerning withdrawing the parent application from issue?

A. I don't recall any.

50 Q. Do you recall any correspondence with respect to that?

A. No.

MR. ANDERSON: Mr. Flannery, if you are leaving that subject, I think as long as you have marked that one letter, it would be appropriate to also mark the request for the translation and the response which you have asked

the witness about. It would save time, is that allright with you?

MR. FLANNERY: You can do it during your cross.

151 Q. You will notice that your petition to withdraw from issue, Mr. Seligman, was dated March 11, 1971.

Isn't it correct, Mr. Seligman, that that is the exact time that Magnavox entered into an agreement with Sanders? In fact, it is the exact date?

150 A. Whether or not that is true or not, I have no specific knowledge without examining documents, but I do have a specific recollection that one had nothing to do with the other.

152 Q. Now, referring to the translation of the French patent and the one that you submitted to the Patent Office in the continuation application, you noticed that the translation does not have any markings on it except for page 5 where an "S" was added to receiver; do you know who added that "S"?

A. I can't say for sure.

153 Q. Well, I will refer you to the Swedish file where the translation is enclosed. The translation that you purportedly received from the Swedish associate,

Q. and you will notice that the "S" has been added in ink?

A. That is correct.

154 Q. Did you add that "S"?

A. I have a specific recollection of the "S" being added, but I don't know if I did it personally.

155 Q. It was added after the translation was received from the Swedish associate?

A. Yes.

156 Q. What were the circumstances under which the "S" was added?

A. To correct an error in the translation.

157 Q. And who determined that that error was there?

A. I don't recall.

158 Q. Who was it that called it to your attention?

A. I don't recall. I just recall it being done.

159 Q. What happened at the time of the petition to withdraw from issue that called the French patent to your attention?

A. What called it to my attention?

60 Q. Yes, at that time. What were the circumstances of you paying the final fee on the parent application and then withdrawing it from issue?

A. I again have no specific recollection, I can only surmise that when I got the translated copy, I saw its relevancy. I saw that it had to be withdrawn.

Q. Did you talk to anybody about that?

A. Yes.

Q. To whom?

A. Mr. Etlinger.

Q. Anybody else?

A. Yes.

Q. Who else?

A. Mr. Cesari.

Q. Who else?

A. Possibly Mr. Baer, I cannot be sure about that.

Q. What was said to Mr. Etlinger?

MR. ANDERSON: I object to the question as a privileged communication and I instruct the witness not to answer.

Q. Was there more than one conversation with Mr. Etlinger with respect to the citing of the French patent and withdrawing the parent application from issue?

A. I am sure there was.

Q. How many conversations do you recollect?

A. I really don't have any recollection as to the number. I know it was an important consideration.

169 Q. How many conversations did you have with Mr. Cesari?

A. I don't recollect that either.

170 Q. What was the substance of your conversation with Mr. Cesari?

MR. ANDERSON: I object to the question on the grounds of attorney-client privilege and I instruct the witness not to answer.

171 Q. How many conversations did you have with Mr. Baer?

A. As I said, I am not even sure that I had any with him. I think we probably discussed it with him.

172 Q. You do not recollect at this time any conversations with him?

A. No.

173 Q. Do you recall conversations with anybody else?

A. No.

174 Q. Now, referring to the - - - Isn't it a fact, Mr. Seligman, that the Patent Office agreed with your position that some of the claims were not patentably distinct from the French patent?

A. I don't know.

75 Q. You don't have any independent recollection of that?

A. They allowed our petition to withdraw from issue.

176 Q. For what reason?

A. I assume the reasons - - - I assume without looking at the document, the reasons that we set forth in our motion for withdrawal.

177 Q. But you have no independent recollection?

A. No.

178 Q. I refer you to the decision on the petition which is in the continuation - in the parent application, I am sorry - which contains an excerpt from a report from the director of Group 230 which he states, "A number of the claims in this application are not patentably distinct from French Patent No. 1,180,470." Did you disagree with that statement of the director?

And MR. ANDERSON: At that time?

MR. FLANNERY: At that time or now, if you want to take both. Did you agree with it at that time?

IT WELSHES I SUBMIT THE WITNESS: I can't recall.

179 Q. Do you agree with it now?

A. I will have to look at the claim and make a determination.

180 Q. Do you have any recollection of disagreeing with  
it?

A. No, I don't.

181 Q. During the prosecution of the parent application  
and continuation application, did Mr. Baer review  
the amendments that were prepared by you?

A. I don't recall.

182 Q. Was your practice in 1970 and '69 to submit amendments  
to the inventors for review?

A. I don't believe so.

83 Q. So it would be unusual to submit to the inventor  
for review?

A. An amendment?

84 Q. Yes.

A. It had been sometimes.

85 Q. And your present recollection is that you don't  
remember submitting any to Mr. Baer?

A. It is hard to recall. I worked relatively closely  
with Mr. Baer in the prosecution of this application,  
but whether I submitted the final amendment to him  
for review, I have no recollection.

6 Q. You have no recollection of submitting an amendment  
to him?

A. Yes, I have no specific recollection.

187 Q. Now, let's go to the file history of the continuation application which issued as the 480 patent and

I will refer you to the amendment which is entitled - not the amendment, but the letter which was filed in the Patent Office on February 2, 1972, entitled "Citation of Reference," did you write that paper?

A. Yes.

188 Q. I refer you to the statement on the first page of that amendment which state, "Applicant has discovered a novel and patentable use for a standard television receiver whereby the general public may employ the television receivers in their homes for other than viewing telecast material displayed on the screens thereof." Did you believe that statement to be correct at the time that you made it?

A. Yes.

189 Q. At this time, you only cited the French patent to the Patent Office, why didn't you cite the Althouse reference to the Patent Office at the same time?

A. I have no recollection of Althouse.

190 Q. I place before you a copy of the Althouse patent which

is patent No. 2,847,661 and ask you if that refreshes your recollection as to the Althouse patent?

A. The figure is familiar as is the name Althouse, the details of that patent are not familiar to me.

191 Q. Isn't it a fact that this was cited in connection with the prosecution of the 284 patent in an action dated March 29, 1971, which is prior to the date of the citation of references in the continuation application?

A. That may be, I have no personal knowledge where that is cited, but the 284 application was not for the same invention as the present application.

192 Q. I will refer to you the file history of the Althouse patent which I have a copy of here.

MR. ANDERSON:- The file history of the Althouse patent?

MR. FLANNERY: Of the Rusch patent, the 284 patent, and the office action dated 3-29-71 in which the examiner cited the Althouse patent No. 2,847,661. Would you have read that office action on or about the date that it was received by Sanders?

THE WITNESS: Not necessarily.

193 Q. When would you have read it?

A. Sometime prior to the amendment being submitted.

194 Q. The amendment was submitted in July of 1971, would that indicate to you that you knew about the Althouse patent prior to that date?

A. Probably, yes.

195 Q. Do you have any recollection now as to why you did not cite the Althouse patent to the examiner in connection with the prosecution of the 480 patent?

A. I have no specific recollection, I assume-I felt it wasn't relevant; but, as I say, I have no specific recollection.

196 Q. Now, referring to page 4 of the letter entitled "Citation of Reference," there is a discussion of the French patent by you and you make this statement, "This index is generated either at a broadcast station or a closed circuit transmitter and the index will be displayed on each of the receivers tuned to the broadcast station or coupled to the closed circuit transmitter." What is the basis in the French patent for that statement,

if you recall?

A. I don't recall. It is my understanding of the French patent.

197 Q. Is it still your understanding of the French patent?

A. Yes.

198 Q. And isn't it a fact that in the prosecution and reissue applications, that you gave a different interpretation to the French patent?

A. I have no idea.

199 Q. Isn't it a fact that the French patent actually obtains sync components from the TV set and is connected to the TV set?

A. What TV set?

200 Q. That it obtains the sync components from.

A. The French patent generates an index at a broadcast station; it doesn't generate them at the receiving end of the broadcast signal.

201 Q. You can refer to the translation, Mr. Seligman, do you recall where there is any support for that statement?

A. Well, you are going to have to bear with me, this is going to take a little bit of time.

MR. ANDERSON: Mr. Flannery, the French patent speaks for itself. I object to having this witness try at this time to give you a present reaction.

MR. FLANNERY: I am not asking for a present reaction.

MR. ANDERSON: You have already established what his recollections are, that is on the record; now you are asking him to read the patent and give present recollections.

MR. FLANNERY: I am asking him to look at the patent and ask him if it refreshes his recollection, I am not asking him to read the whole thing.

MR. ANDERSON: My objection stands. You have changed the question. The witness may read the document if you want to take time to see if it refreshes his recollection as to what he thought at that time.

Q. Maybe I can save a little time and ask you a foundation question. Would reading the French patent refresh your recollection?

A. Probably not.

203 Q. Now, referring to the next page of the application - - -

MR. ANDERSON: Of what application, Mr. Flannery?

MR. FLANNERY: Of the continuation application, the one we have been discussing for the last half hour.

MR. ANDERSON: The citation of reference or the continuation application?

MR. FLANNERY: Either way. The next page of the file history or the next page of the citation of reference.

204 Q. There is a statement up at the top which says, "Applicant's claims 1 and 31 recite: means for coupling the generated signals only to said television receiver whereby said dots are displayed only upon the screen being viewed by the participant." Isn't it a fact, Mr. Seligman, that the Althouse patent disclosed that?

A. Disclosed that specific thing?

205 Q. That statement.

A. I don't recall the Althouse patent enough to say whether that is true or not.

206 Q. Now, referring over to the next amendment that was

filed by you, amendment A in the continuation application which was filed in the Patent Office in October of 1972, I will ask you if you wrote that amendment?

A. I would say I did.

Q. This indicates that you interviewed the examiner again in connection with prosecution of the subject matter of this application, is that correct?

A. The paper so indicates.

Q. Do you recall that interview?

A. I have a very vague recollection of an interview with Examiner Murray, but I can only guess that it is this interview that is referred to in here.

Q. Who was present at the interview?

A. I have a vague recollection of Mr. Etlinger being present, but again I am not even sure that that is a good recollection. I might be thinking of another interview where he was present, so it is not a very positive recollection.

Q. Do you recall whether you brought along any documents or things to this interview?

A. No.

Q. Do you recall in connection with the prosecution

of any of the applications on the TV games, do you recall any other interview other than what you have testified to previously in which you showed the examiner one of the TV games?

A. I have no recollection of that. There is a possibility, though. There is a possibility that we did demonstrate it at another interview, but I can't recall.

212 Q. What do you recall about that other demonstration?

A. I don't. It just seems to me that where we demonstrated it at the first interview, we would have done it again, but I don't have a specific recollection of having done it.

213 Q. Do you recall what was said at this interview in October of 1972 which you referred to in this amendment A?

A. No.

14 Q. As I gather from your testimony, you have no specific recollection of anything that happened at that interview?

A. That is correct.

15 Q. Do you normally keep memorandums of what occurs at interviews?

A. No, I wouldn't think so.

216 Q. Did you keep any memorandums of what occurred at  
any of the interviews in connection with the  
prosecution of the patents directed to TV games?

A. If there are such memorandums, they would be in  
this room somewhere because everything has been  
produced, but I don't recall any.

217 Q. You don't recall any?

A. No.

218 Q. Do you recall Mr. Etlinger making any notes during  
any of the interviews that he was present at?

A. No, I don't.

19 Q. Did you make any notes at any of the interviews that  
you were present at?

A. I am sure I did.

220 Q. Do you still have those notes?

A. I don't believe so. I don't recall seeing them.  
More often than not after I file an amendment,  
I probably throw the notes out.

MR. FLANNERY: Mr. Anderson,  
have all those notes been produced for our  
inspection, if there are any?

MR. ANDERSON: I don't know

of any notes. We have produced everything that is available in connection with these file wrappers or identified them if they are confidential.

221 Q. Then we can assume that if there were any, they were destroyed?

A. If there were any notes, they must have been destroyed and I am sure there must have been some notes to at least reflect the examiner's wishes.

222 Q. When you petitioned to withdraw the parent application from issue, did you get any consideration to the fact that by not allowing the patent application to issue as a patent, the examiner could not cite it as a reference to the 284 and the 285 patent?

A. No, sir.

MR. ANDERSON: I object to the question as lacking a foundation and being erroneous in fact and in law.

MR. FLANNERY: You will have to explain that objection to me sometime, Mr. Anderson..

MR. ANDERSON: I will.

223 Q. Mr. Seligman, I show you a copy of Balding No. 3,122,607 and I will ask you when did you become aware of that

patent?

A. I don't recall.

224 Q. Do you recall whether or not it was prior to the  
issuance of the 480 patent?

A. I don't recall at all.

225 Q. Do you recall any reason for not citing it to the

A. Patent Office during the application for the  
480 Patent?

A. If I was aware of it prior to the application of  
the 480 patent, obviously I didn't see any  
relevance.

226 Q. Do you have any recollection?

A. I have no recollection whatsoever.

227 Q. I will show you a letter from the French associate  
in connection with the prosecution of the French  
application which corresponds to the application for  
the 480 patent, a letter dated May 31, 1971, which  
was received by Sanders on May 17, 1971, and I  
will ask you if that refreshes your recollection as  
to when you became aware of the Balding Patent  
No. 3,122,607?

A. If I submitted a response to this first project  
of novelty report, it was probably prior to submitting

that response.

228 Q. I refer you to a letter dated August 13, 1971,  
and ask you if that is the response?

A. It looks like it.

229 Q. Does that response refer to the Balding Patent  
No. 3,122,607?

A. 3,122,607?

230 Q. Yes.

A. Yes, it does.

231 Q. Does that indicate to you that you were aware of  
the Balding patent prior to the date of that  
letter, which letter had been dated August 13,  
1971?

A. Yes, it does.

32 Q. Do you have any recollection of why you didn't  
call it to the attention of the Patent Office during  
the prosecution of the 480 patent?

A. I have no recollection of that patent.

233 Q. When did you first hear of a game entitled  
Space War?

A. Late July, '75.

234 Q. How did you learn about the game entitled Space  
War?

A. I saw a book which had some reference to it.

235 Q. Where did you obtain the book from?

A. From Mr. Etlinger.

236 Q. I will refer you to deposition Exhibit No. 23 of the Samson deposition and ask you if that is a copy of the book that you saw in July of 1975?

A. That looks like it.

237 Q. What did Mr. Etlinger say to you when he gave you the book?

MR. ANDERSON: If you recall.

THE WITNESS: I don't recall his instructions.

238 Q. Do you recall anything about that discussion?

A. No.

239 Q. Do you recall Mr. Etlinger telling you to read the book?

A. I have no specific recollection of that.

240 Q. You mean he just handed you the book and said, here?

A. No, I am sure he gave me some instructions. Whether he said to read it, to look at it, it was obviously handed to me to look at.

241 Q. And did you look at it?

A. At some time I did.

242 Q. Do you recall when you looked at it?

A. Maybe a day later, maybe a week later, maybe two weeks later, but I did look at it.

243 Q. So would that bring us up to the first of August, 1975?

A. It could be, it is in that time frame.

244 Q. Did you do any further investigation on - I am asking you - did you personally do any further investigation on the game called Space War?

A. If you can define what you mean by investigation. All right, I will even withdraw that. At some time I did some investigation regarding Space War, yes.

245 Q. When was this?

A. At some period in time after receiving the book. Some later period of time I believe I asked someone if they knew anything about that display that was illustrated in the book. I also was asked to, I believe in response to a production of documents or something like that, to gather all information regarding Space War.

246 Q. Who did you ask concerning seeing the display of Space War shown in the book which has been marked Samson deposition Exhibit No. 23?

A. I think it is John Sauter, I am not sure.

Q. Did you talk to anyone else other than John Sauter?

A. Regarding the book?

Q. Regarding Space War?

A. Regarding Space War, yes.

Q. Who else?

A. In gathering material, I talked to a well; I have talked to Ted Mairson, Joe Frisbie, Gordon Green. I think someone named Reiner, all of a sudden his first name, I can't remember it. I talked to some technician also whose name I don't recall.

Q. What did Mr. Mairson say in conversation with you concerning Space War?

A. I don't have a specific recollection of exactly what he said. It is my general recollection that he was familiar with it.

Q. Could you give us a little more about what he said?

A. I can't recall whether he said he had seen it or played it. He was familiar with it.

Q. Did he say when he saw it or played it?

A. He may have, but I don't recall.

Q. Do you recall anything else about the conversation

other than that Mr. Mairson said that he may have seen it or played it?

A: No. There was no other one.

Q: Did Mr. Mairson give you a tape for a PDP-1 which tape was the program tape for Space War?

A: We presented such a tape which is identified with the word Space War on it and I can't recollect whether it was Mr. Mairson or not who gave me that tape. I don't recollect receiving that tape from him.

Q: Who did you receive the tape from?

A: I believe I got one from Gordon Green.

Q: Did you get other tapes from someone else?

A: Space War on a PDP-1?

Q: Yes.

A: Yes, there were others.

Q: How many others?

A: I don't recall.

Q: One?

A: Well, whatever they are, they have been presented here.

Q: Well, I am asking for your recollection; how many tapes were there? A third.

A. Well, there were a few paper tapes, but I can't recall if they were all for the PDP-1.

261 Q. Were they for other computers?

A. Yes. I am not sure whether the paper tapes were for other computers or not.

262 Q. Well, how many paper tapes were there?

A. Two or three, I don't know.

263 Q. I place before you two paper tapes which have been marked as Sanders Exhibit 3 and Sanders Exhibit 5 and I will ask you if there were any other tapes other than those two?

A. I don't recall it.

264 Q. Do you recall where those paper tapes were obtained?

A. I remember getting a tape from Gordon Green, one from John Sauter and possibly one from Matt Reiner. I don't recall it now. His first name finally came to me.

265 Q. Your present recollection is that there were three tapes?

MR. ANDERSON: I object, I don't think he so testified.

THE WITNESS: Just two clearly, whether there was a third, I am unclear.

266 Q. There may have been a third?

A. If there was a third, it has been presented here.

267 Q. Can you give us the substance of your conversation with Mr. Frisbie?

A. I asked Frisbie what he could do about obtaining documentation which is within Sanders pertaining to Space War.

268 Q. And what did Mr. Frisbie say?

A. It seems to me he was trying to get a little money out of the Patent Department to carry out this investigation.

69 Q. Was he aware of any Space War games?

A. I believe he was.

70 Q. What did he tell you about those Space War games?

A. I don't recall what he told me. I have talked to a number of people in response to the request for production of documents or interrogatories, I guess it was, and - - -

1 Q. Did you keep notes of your conversations with Mr. Mairson?

A. I did at one time.

2 Q. Did you keep notes on your conversation with Mr. Frisbie?

A. I kept a number of notes originally, I believe, to respond to the interrogatories.

273 Q. Well, did these notes reflect your conversations with these people?

A. To some extent. The notes will reflect generally response to the question do you have any documentation regarding Space War and questions to try and ascertain whomever within Sanders would likely either have documentation or be familiar with Space War.

274 Q. Did you ask any of these people as to when they first heard of Space War?

A. When they first heard of it, possibly, I am not sure they also indicated to me that...

275 Q. Did you get any replies to that question?

A. Yes, they had these topics earlier.

276 Q. What did they say?

A. I am not sure I asked the question, I got replies to the question whether I asked it or not.

277 Q. What did Mr. Mairson say, if he replied to the question?

A. I don't recall his specific reply.

278 Q. What did Mr. Frisbie say?

A. I can't separate some of these replies, but they

... were not and it is ...

1. ... the rate of 2.11

2. I don't recall the rate, it is ... reported ...

3. ... the ... rate ...

4. ... that ... rate ...

5. ... the ... rate ...

6. ... the ... rate ...

7. ... the ... rate ...

8. ... the ... rate ...

9. ... the ... rate ...

10. ... the ... rate ...

11. ... the ... rate ...

12. ... the ... rate ...

285 Q. Who is Mr. Green?

A. He is an engineer.

286 Q. How long has he been with Sanders?

A. A good number of years; I don't recall when he started.

287 Q. He has been with them from the beginning of the Sixties, at least?

A. I don't know.

288 Q. Well, was he here in the mid-Sixties when the PDP-1 was received?

A. I believe he was.

289 Q. Could you state for the record what the substance of the conversation with Mr. Green concerning Space War was?

A. I asked him if he had any documentation and he said he did. I asked him to supply it to me. I asked him if he could give me some leads where else I could find people who were familiar with Space War and had documentation relating to it.

290 Q. What sort of documentation did he give you?

A. He gave me a paper tape, he gave me a sheet of paper with instructions or something on it. Maybe two sheets of paper. I don't recall what else.

291 Q. Do you recall anything else about the conversation  
with Mr. Green?

A. I believe he was of the opinion that that piece of  
paper came with the PDP-1.

292 Q. The piece of paper that he gave you?

A. Not that specific piece of paper necessarily, that  
may have been a copy or something that he wrote  
copying it from a piece of paper.

293 Q. I will hand you a document, a two-page document  
which we will mark as Deposition Exhibit 64 which  
purports to be a letter from Mr. Keiran to  
Mr. Matthews dated December 8, 1969, and an  
attachment which appears to be a purchase order  
dated November 3, 1967, and I will ask you if that  
document was given to you by Mr. Green?

A. Mr. Green, not that I recall.

94 Q. You said during your prior testimony Mr. Green  
gave you three or four documents?

A. I said he gave me a tape and I said he gave me a  
document with some instructions on it.

5 Q. I place before you - - -

MR. ANDERSON: Mr. Flannery,  
personally I can't read the date on the attached

purchase order.

296 Q. Maybe you could tell us for the record, Mr. Seligman, where you obtained the document from? The document that has been marked Exhibit 64.

A. Well, I am not exactly sure. You are mentioning it coming from Mr. Green, possibly he gave me a copy of it too. I remember getting a copy of this purchase order from Joe Frisbie; now, I might have gotten another copy from someone else, too, but this purchase order I remember coming from Joe Frisbie.

97 Q. Do you recall where you received a copy of the letter from?

A. It may have been attached to it, but I don't recall. I have seen it before, but I think the record somewhere will show --

MR. WELSH: It doesn't.

THE WITNESS: It doesn't show it?

MR. WELSH: No.

THE WITNESS: I can only guess that it too came from Joe Frisbie, but that is a guess on my part. I don't recall.

298 Q. (By Mr. Flannery) And both these documents were obtained from the files of Mr. Frisbie, to the best of your knowledge?

A. I got them from him, I assume they came from his file, but I have no recollection of that.

MR. WELSH: Mr. Williams just reminded me that when these sheets were produced on March 17, you advised us that you had obtained them from Mr. Frisbie; may we stipulate to that, Mr. Anderson?

MR. ANDERSON: Yes, we can stipulate that that is what the witness said on March 17, 1967.

MR. WELSH: May we stipulate that that is where he got them?

MR. ANDERSON: I guess I don't think it is very critical.

MR. FLANNERY: Well, I think it is critical as to what files it came out of, that is all.

THE WITNESS: The purchase order was clearly gotten from Frisbie, I have no doubt about that. I have just no recollection

if this was attached. (Indicating)

299 Q. You are referring to the letter which was attached  
to it?

A. Dated December 8.

300 Q. Now, I will place before you a second document  
which we will mark as Exhibit 65 and I will ask  
you if you can identify that document?

A. That looks like the document that I did get from  
Gordon Green.

301 Q. What did he say about that document when he gave  
it to you?

A. I believe he said that either that document or  
a copy thereof or a document from which this  
was copied he believed came with the FDP-1 that was  
purchased in Bedford.

(Whereupon, Exhibits 64  
and 65 were marked for  
identification.)

(Whereupon, the luncheon  
recess was taken.)

302 Q. (By Mr. Flannery) Mr. Seligman, I will hand the  
reporter to mark two magnetic tape reels, one is

identified as Reel No. 820 which we will mark as Exhibit 66 and another reel which is identified as Reel No. 890 which we will identify as Exhibit 67 and I will ask you if you have seen those reels prior to today?

A. Yes.

Q. Where did you see those reels?

A. They were given to me and I produced them here earlier.

Q. Who gave them to you?

A. Reel No. 890 was given to me by Matt Reiner.

Reel No. 820 was given to me by another fellow whose name I don't recall at the present time.

I believe we identified it earlier, the source of it.

Q. The technician?

A. No, not earlier in my deposition, but when they were produced.

MR. WELSH: Mr. Williams, do you have notes of that?

MR. ANDERSON: Apparently a Mr. Paul Dixon.

MR. FLANNERY: Would you mark

those as Exhibit 66 and 67, please?

(Whereupon, Exhibits 66 and  
67 were marked for  
identification.)

306 Q. I place before you three paper tapes which we will  
identify as Deposition Exhibits 68, 69 and 70 and  
I will ask you if you have seen those paper tapes  
prior to today?

A. I believe so.

207 Q. Where did you see those prior to today?

A. I collected those tapes for production here.

(Whereupon, Exhibits 68,  
69 and 70 were marked  
for identification.)

208 Q. I hand you Exhibit 68 and I will ask you where  
you obtained Exhibit 68?

A. The name Ray Rouleau is written on this tape,  
I assume I obtained it from him.

09 Q. Did you in fact obtain a tape from Mr. Rouleau?

A. I believe I did.

10 Q. And as I gather from your prior testimony, you

obtained these sometime in March of this year?

A. I don't remember the date, but it was in response to the interrogatories that requested this material.

211 Q. When was it, about March of this year?

A. Who knows.

212 Q. Well, it was this year sometime?

A. Surely.

213 Q. I place before you Exhibit 69 and I will ask you who you obtained this tape from?

A. Gordon Green.

214 Q. Whose writing is on the front of these tapes, 68, 69 and 70?

A. Exhibit 68, the name, the writing identifying the name Ray Rouleau, is my writing. I don't know whose writing is the rest of it.

215 Q. Whose writing is on the front of Exhibit 69?

A. I do not know.

216 Q. Whose writing is on the front of Exhibit 70?

A. The name Matt Reiner is my writing. I don't know who wrote the rest of it.

217 Q. Where did you obtain Exhibit 70?

A. I believe Matt Reiner.

218 Q. You indicated in your prior testimony, Mr. Seligman,

that you received a copy of the complete translation of the French patent No. 1,180,270 in February of 1971, did you see a translation of any portion of that French patent prior to receiving the complete translation?

A. I really don't recall unless the office action or the letter from Sweden may have mentioned a portion of it. I don't specifically recall.

219 Q. Did you translate any of the French patent by yourself?

A. No.

220 Q. Did you have anyone translate it for you other than the Swedish counsel?

A. I believe someone looked at it and I can't recall who, that is why the correction was made.

221 Q. I place before you a document which we will mark as Exhibit 71 and I will ask you if you can identify that document?

A. I have seen it before. It looks like something that Mr. Baer wrote.

222 Q. Do you recall where you saw it previously?

A. The only recollection I have of seeing it was this morning.

223 Q. You mean when you went through the file during  
your deposition?

A. That is correct.

224 Q. Do you recall when you first saw that document?

A. No, I don't.

225 Q. Does it refresh your recollection as to any discussion  
with Mr. Baer concerning the French patent?

A. No specific discussion.

226 Q. Any discussion?

A. Well, I am sure that I had a discussion with  
Mr. Baer, but I have no recollection of the  
specific discussion nor what we discussed.

MR. FLANNERY: Read that back,  
please?

(Whereupon, the previous  
answer was read back

by the reporter.)

27 Q. Do you recall when you had that discussion?

A. No.

MR. ANDERSON: Just for the  
record, Mr. Flannery, can we make a record of  
from what file you removed Exhibit 71?

MR. FLANNERY: Maybe.  
Mr. Seligman can identify the file.

I refer you to MR. ANDERSON: Well, you are handing him the file from which you removed it so he can identify it, is that right?

MR. FLANNERY: You saw me do it.

THE WITNESS: It is a file marked D-2401.

MR. FLANNERY: That is the file in which the paper was in when we found it.

MR. ANDERSON: All right; I just want the record to be clear partly so that the record will be clear and partly so we can put it back when you are through.

(Whereupon, Exhibit 71 was marked for identification.)

- 28 Q. Can you identify that file any further, Mr. Seligman?
- A. Can I identify it any further?
- 29 Q. As to whose file it is. Isn't it Mr. Baer's file?
- A. There are papers in here which are not Mr. Baer's.

These papers do not belong to Mr. Baer, so I cannot say that it is Mr. Baer's file.

Q. Well, I refer you to one of the documents attached which is a letter from you to Mr. Baer.

A. It is a letter from me to Mr. Baer.

Q. Does that indicate to you that that is Mr. Baer's file?

A. It still doesn't indicate to me that it was his file. He may have just brought that memo back to the Patent Department to discuss it.

Q. I place before you two sheets of drawings which appear to be sheets of drawings of the French patent containing writings by someone which we will mark as Exhibits 72-1 and 72-2 which we also removed from the file D-2401. Do you recall seeing Exhibit 72 prior to today?

A. Yes.

(Whereupon, Exhibits 72-1 and 72-2 were marked for identification.)

Q. When did you first see that?

A. I don't know that I haven't. Perhaps I saw it

234 Q. Do you have any idea as to when you first saw it?

A. None at all.

235 Q. Was it a year ago, two years ago?

A. Well, I would say it was some time ago.

236 Q. Was it during the prosecution of the 480 patent?

A. Possibly.

237 Q. Whose writing is on that?

A. Mine.

238 Q. Do you recall if you put that writing on there before the parent application was abandoned?

A. I can't say for sure. I really can't say, period, I just don't know.

239 Q. You have no recollection?

A. No. I don't know about it.

240 Q. Do you recall why you put that writing on there?

A. I would assume I wanted to know how the circuit worked so I identified portions of it.

41 Q. Do you recall seeing these notes from Mr. Baer which have been marked Exhibit 71 during the prosecution of the 480 patent?

A. I think I already testified that I don't recall seeing them at all until this morning, but I wouldn't say that I haven't. Perhaps I have and

perhaps I haven't.

242 Q. Do you read French, Mr. Seligman?

A. And understand it, or just read it? No, I don't read French. Very little, anyway. Not enough to do anything with a technical subject.

243 Q. When did you first hear that Mr. Williams saw a game being played at Stanford during his schooling at Stanford in the middle Sixties?

A. Well, sometime prior to his deposition, but I don't know how much prior.

44 Q. Did you in fact hear about it at about the time that the reissue applications were filed?

A. I don't believe so.

45 Q. Did you hear about it during the pendency of the reissue applications?

A. I don't think so; I think it was first brought to my attention when I learned that he was going to be deposed.

6 Q. Mr. Seligman, I will place before you a document which purports to be a copy of a letter from you to the Swedish associate dated June 24, 1970, which we will mark as Exhibit 73 and I will ask you if you wrote that on or about the date that it bears?

A. I have no reason to believe that I didn't.

247 Q. Does that letter refer to the foreign counterpart of the 480 application?

A. Yes.

248 Q. Did you believe that the statements that you made in that letter at the time you wrote it were accurate?

A. I am sure I did.

249 Q. I will place before you another document which purports to be a copy of a letter from you to the German associate dated September 12, 1972, which we will mark as Exhibit 74 and I will ask you if you wrote that on or about the date that it bears?

A. I would assume I did.

(Whereupon, Exhibits 73 and 74 were marked for identification.)

50 Q. Your best recollection is that you did?

A. Well, I have no recollection of writing the letter, but where my signature - what there is of it - it appears to be my signature and there also appears to be an indication that it was mailed

on such-and-such a date.

51 Q. Does that letter relate to the German counterpart  
of the 480 application?

A. Yes.

252 Q. Are the statements that you made in that letter  
accurate as of the date that you wrote that letter?

A. I would assume so, but do you want me to read the  
letter and find out?

253 Q. Well, would you have written statements in the  
letter if you didn't believe that they were  
accurate?

A. No, not normally.

254 Q. I place before you another document which purports  
to be a copy of a letter written by you to the  
German associate dated January 4, 1973, which we  
will mark as Exhibit 75 and I will ask you if you  
wrote that on or about the date that it bears?

A. I would assume so.

55 Q. Does that letter relate to the foreign German  
counterpart of the 480 application?

A. It appears to.

6 Q. Were the statements that you made in this letter at  
the time that you wrote it, do you believe them to

be accurate?

A. Without reading them, I must assume so.

Q. You have no reason to believe that they were inaccurate?

A. I have no reason to believe anything; I haven't seen the statements.

Q. Is it your normal practice to write lies in letters?

A. No, my normal practice is not to write lies in letters.

Q. Do you doubt some of the statements that you made in some of your letters?

A. I cannot say anything unless I read statements. I assume that statements that I make in letters are truths.

Q. Or you wouldn't make them?

A. That is correct.

(Whereupon, Exhibit

No. 75 was marked for identification.)

A. I believe so.

Q. I place before you another letter which purports to be a memo from you to Mr. Etlinger dated July 6, 1973, and I will ask you if you wrote that (identification.)

on or about the date that it bears and we will mark it as Exhibit 76?

A. I would assume that it was written on or about that date.

262 Q. Do you have any recollection that it wasn't written on that date?

A. No, I don't.

263 Q. It is your best recollection that it was written as of that date?

A. Yes.

264 Q. Does this memo which has been marked Exhibit 76 refer to the German counterpart of the application which issued as the 480 patent?

A. Yes.

265 Q. Are the statements that you make in this memo, were they accurate as of the date that you wrote the memo - strike that. Did you believe that the statements that you made in that memo were accurate as of the date that you wrote the memo?

A. I believe so.

(Whereupon, Plaintiff's

Exhibit No. 76 was marked  
for identification.)

66 Q. Do you recall what you meant by the statement,  
"This possibility was not known at the time this  
application was filed and accordingly no disclosure  
of this effect is in the specification," which  
appears in Exhibit 73?

A. I read the statement and I understand what it says.

267 Q. Do you have any recollection at this time as to  
what you meant?

MR. ANDERSON: You mean something  
else other than what it says?

MR. FLANNERY: Yes.

THE WITNESS: No, I don't see  
where it means anything other than what it says.

268 Q. I place before you a document which purports to  
be a letter from you to your Japanese associate  
dated January 4, 1974, which we will mark as  
Exhibit 77 and I will ask you if you wrote that  
on or about the date that it bears?

A. I believe so.

(Whereupon, Exhibit No. 77  
was marked for identification.)

69 Q. Does that letter that you wrote refer to the

Japanese counterpart to the application which issued as the 480 patent?

A. Yes.

270 Q. Did you believe that the statements that you made in that letter were accurate as of the date of the letter?

A. That the statements were accurate as of the date of the letter? I would say that I believed that those statements were accurate, not necessarily that they were accurate.

271 Q. I place before you another document which purports to be a letter from - a copy of a letter from you to the German associate, your German associate, dated January 8, 1975, which we will mark as Exhibit 78 and I will ask you if you wrote that letter on or about the date that it bears?

A. I would assume so, yes.

272 Q. Does that letter refer to the German counterpart of the application which issued as the 480 patent?

A. Yes, it does.

273 Q. Did you believe that the statements that you made in that letter were accurate as of the date that you wrote the letter?

A. I would assume so.

(Whereupon, Exhibit No. 78

was marked for  
identification.)

274 Q. What was your first knowledge of the use of the  
hit spot in a TV game?

A. I don't recall whether it was the receipt of a  
disclosure or seeing the demonstration.

275 Q. Did you have any knowledge of the conception of  
the use of a hit spot in a TV game?

MR. ANDERSON: I object to the  
question. I didn't object to the last one, although  
I should have on the ground of a lack of a  
foundation and a clear identification of what you  
mean by hit spot. Do you mean in the context of  
one of the patents in issue in this case?

MR. FLANNERY: The witness  
doesn't seem to be having any problem, Mr. Anderson.

MR. ANDERSON: Well, that  
doesn't mean that you should generate an ambiguous  
record for the use of a hit spot.

MR. FLANNERY: I am not

generating an ambiguous record.

MR. ANDERSON: You are trying

to. Do you mean a hit spot as used in the patents?

276 Q. What is your understanding?

A. I assumed you meant a hit spot as used in the patents.

277 Q. Do you have any knowledge of the conception of the use of a hit spot in a TV game?

A. Yes.

278 Q. What was your knowledge?

A. That it was conceived by William Rusch.

279 Q. How do you know that?

A. Because I had many discussions with him and I have seen his notebooks.

280 Q. Were you present at the conception?

A. No.

81 Q. Are you one of the witnesses to the conception?

A. Witnesses to conception?

82 Q. Yes.

A. I don't understand the question.

83 Q. Well, were you one of the witnesses to the original conception of the use of a hit spot in a TV game?

A. Did I sign notebook pages or disclosures or that

sort of thing?

4 Q. Yes.

A. I don't know. I may have signed a page two, but I don't recall. There were very few people involved in this project and from them I illustrated the fact that Bill Rusch in fact was the inventor in this area. It is very clear.

85 Q. I place before you a document which has been marked 9-197 through 9-223 and I will ask you if that is the disclosure that you first saw in connection with the use of a hit spot in a TV game?

A. Well, I have seen this. I have some vague recollection of something preceding this, I am not sure if it was maybe a handwriting version of this or something.

6 Q. I place before you a document which has been marked Exhibit 9-130 through 9-173 and ask you if that is the document you are referring to as the handwritten disclosure?

A. I have seen that also.

Q. Which did you see first?

A. I couldn't say; I just don't know.

288 Q. But these are the disclosures that you recall seeing?

A. They are very familiar, again I am hindered by the fact that - - -

289 Q. When did you first see a device - - - I am sorry, hindered by what?

A. Well, the fact that I have seen all these previously during depositions of Mr. Rusch, it is hard to disassociate those events from earlier events.

290 Q. Maybe if you would look through your file, you can determine which disclosure you saw.

A. I certainly saw this one that is in the file, but I have no reason to believe that I didn't also see the earlier one.

291 Q. The earlier one is not in your file?

A. I don't see it here.

292 Q. I place before you Exhibit 45 which appears to be a copy of the document which is in your file, is that correct?

A. Without comparing it page to page, I would say so. The front page looks that way.

93 Q. Did you also see the device constructed with the hit spot?

A. I have seen a device with a hit spot.

Q. Did you see the device prior to writing the application?

MR. ANDERSON: What application?

MR. FLANNERY: On the hit spot.

THE WITNESS: I can't say for sure. If the device was built at that time, which I believe it was, I would have seen it because the game was demonstrated to me.

Q. Did the device have wall bounce?

MR. ANDERSON: I object to the question as lacking a foundation. What do you mean by wall bounce?

Q. Do you know what wall bounce is?

A. If you are referring to the bouncing of a display <sup>of</sup> image fixed in position, if that is wall bounce; did it have wall bounce?

Q. Yes.

A. I don't think so, but I am not sure.

Q. Did you make any investigation as to whether or not the use of - the conception of the use of a hit spot in a TV game came after the date of invention of the subject matter of the 480 patent?

MR. ANDERSON: Would you  
read the question, please?

(Whereupon, the previous  
question was read back  
by the reporter.)

THE WITNESS: Did I make any  
investigation?

Q. Yes.

A. I don't think any investigation was required, it  
was obvious.

Q. That it did come after?

A. The hit spot, after the basic invention?

Q. Yes.

A. Yes, clearly.

(Whereupon, a recess  
was taken.)

Q. Who determined the inventorship of the subject  
matter of the 284 application?

MR. ANDERSON: I object to  
the question as vague and ambiguous and lacking  
a foundation.

THE WITNESS: I would assume  
Mr. Etlinger or myself.

03 Q. Do you recall doing anything at all to determine  
who was the inventor of the subject matter of the  
284 application?

A. In this instance, I think it was very clear that  
Mr. Rusch was the inventor because of the  
distinctive circuitry used in developing this  
invention.

04 Q. What distinctive circuitry?

A. The slicer circuits.

05 Q. And you determined that from your investigation that  
he was the one who designed those slicer circuits?

A. Yes, all parties concerned agreed that that clearly  
was his design, his concept.

06 Q. Did all parties concerned agree that he was also  
the inventor of a hit spot in a TV game?

A. I believe so. I think the two were done  
simultaneously.

07 Q. Was Mr. Rusch also the inventor of the use of  
a wall bounce TV game?

MR. ANDERSON: I object to  
the question, it is asking for an opinion. Are you

asking his present opinion, what he thought at that time, what the facts show or what?

MR. FLANNERY: What he thought when he made his investigation.

MR. ANDERSON: You want to know what he thought at that time?

MR. FLANNERY: Yes.

Normally in this type of testimony, you are not really interested in what he thinks about it today, but what he thought at that time.

MR. ANDERSON: I agree, but there seems to be some attempt to interrogate the witness in an unusual manner as well as others in the case.

MR. ANDERSON: It is my belief that all of this isn't the subject matter of the 284 application.

Q. Did Mr. Busch ever indicate to you that he thought it was the subject matter of the 284 application?

A. Not that I can recall.

Q. I place before you a document which has been marked Exhibit 41, which is a letter from Mr. Busch to Mr. Etlinger dated July 9, 1973, which states,

"The display even incorporates wall bounce as exhibited in our patent 3,659,284."

MR. ANDERSON: I object to the question as lacking a foundation. We agreed earlier that you were referring to the terms as they were used in the patent specifications. There is no foundation for what you mean by wall bounce in this question.

MR. FLANNERY: I am using what the inventor thought was wall bounce.

MR. ANDERSON: You are asking this witness to say what the inventor thought when he was referring to wall bounce or are you asking the witness some other question?

MR. FLANNERY: I am asking the question I asked him.

MR. ANDERSON: You just said you asked him what the inventor thought and I object. The inventor has testified and this witness is not qualified to testify about what the inventor thought.

MR. FLANNERY: Would you read back that question?

MR. ANDERSON: And the  
application.

MR. FLANNERY: I don't want  
that. Read back my question and insert it at this  
point.

MR. ANDERSON: And insert his  
modification also.

MR. FLANNERY: No, I am just  
inserting my question.

(Whereupon, the previous  
question was read back  
by the reporter.)

310 Q. Did Mr. Rusch consider that his application  
disclosed a wall bounce feature?

MR. ANDERSON: I object to  
the question as asking this witness what Mr. Rusch  
considered. It is speculative, hearsay; the  
witness is not qualified to answer the question as  
to what Mr. Rusch considered, but you may answer,  
if you can.

THE WITNESS: I assume that  
by wall bounce as referenced in this memo, Mr. Rusch

meant what we have referred to many times as edge bounce, but that is only an assumption on my part.

1 Q. Well, edge bounce is disclosed in the 284 patent?

A. I believe so.

12 Q. And edge bounce is Mr. Rusen's invention?

A. I believe so.

13 Q. What is the difference between edge bounce and what you call wall bounce?

A. Well, I look upon wall bounce - - -

MR. ANDERSON: I object to the question, you are asking him his present opinion?

MR. FLANNERY: At that time, what did you consider?

MR. ANDERSON: At what time?

MR. FLANNERY: At the time that you wrote the 285 patent.

THE WITNESS: I don't know if the terms were even in existence at those times. I can't even recall that.

MR. ANDERSON: The patent applications speak for themselves.

MR. FLANNERY: To whom?

MR. ANDERSON: To everybody,

even some judges.

Q. What I am trying to do, Mr. Seligman, is to have some terms that we can use for the rest of the testimony. If I use edge bounce to indicate the subject matter of the 284 patent, will you understand that?

MR. ANDERSON: Or part of the subject matter.

MR. FLANNERY: Or part of the subject matter.

THE WITNESS: I understand what edge bounce means.

Q. And if we refer to wall bounce as part of the subject matter of the 285 patent - - -

A. Yes, I will understand that.

Q. And when you received a copy of Exhibit 41, what did you believe Mr. Rusch meant by wall bounce?

MR. ANDERSON: I object to the use of the labels. In view of the use of both terms in different contexts in this and other testimony, I think the witness should answer that question in some functional term not in terms of wall bounce or edge bounce, and the question is

still as of the date he wrote the application,  
is that correct?

MR. FLANNERY: The date he  
received that.

THE WITNESS: Well, I have  
no specific recollection.

Q. When you read the memo, you don't recall what  
you believed Mr. Busch was referring to by wall  
bounce?

A. I can only make an assumption; I can't recall it,  
no.

Q. What is your assumption?

A. My assumption is that he meant bouncing off the  
edge of the screen.

Q. Do you recall any discussions with Mr. Busch or  
anyone else prior to writing the 284 application  
with respect to the subject matter of the 294  
application?

A. I can't say - - - Well, certainly some had to be  
prior to. At least one had to be prior to. I had  
many discussions with Mr. Busch while writing that  
application.

Q. Did you have any discussion with anyone else with

respect to the 284 application during the time you were writing the application?

A. I don't recall.

Q. Did you talk to Mr. Harrison?

A. It is also a possibility, but I have no specific recollection of talking to him.

Q. Do you recall how many drafts of that application you wrote?

A. No, I don't.

Q. I place before you a file which appears to be your file, Mr. Seligman, and I will ask you if you can identify the document that is contained in that file?

A. It looks to me like an early draft of the application which became the 284 patent.

Q. Does that contain all your writing or is there someone else's writing there?

A. There is some writing that isn't mine.

Q. Do you know whose writing that is?

A. I believe it is my secretary's.

Q. Any other writing in there that isn't yours?

A. There is some writing that has been erased which I do not believe is mine. There is a note here that

is not in my handwriting. It says, "These pages have been retyped because of changes by I. R. S."

Q. And when you submitted the draft to the inventor, did the inventor make changes in the draft?

A. I would assure he did.

Q. Did he make extensive changes?

A. I have no idea. Certainly this is not the draft that I would have submitted to the inventor.

Q. I place before you two documents which have been marked Exhibits 51 and 52 which have been identified as oaths in connection with the application for the 284 patent.

MR. ANDERSON: They are actually entitled oath, power of attorney and petition.

Q. Do you recall why those oaths weren't used?

A. No. I merely recall them being executed and having them reexecuted.

Q. Do you recall why?

A. But I cannot recall the reason.

Q. Do you recall having any interviews with the prosecution of the 284 application?

A. I have had interviews with the examiner, but I can't recall if it was this particular application.

I have had interviews regarding TV gaming applications.

Q. I place before you the file history of the 284 application and refer you to page 146 of that file history and ask you if that refreshes your recollection of an interview with the examiner in connection with the prosecution of that application?

A. I recall the interview.

Q. Who was present at the interview?

A. I could only guess that it was Etlinger, Baer and myself, but I may be wrong. I am not sure that Baer was there. I am not even sure that Etlinger was there.

Q. Did you bring any documents or things to the interview?

A. I certainly brought documents.

Q. Did you show any documents to the examiner that were not of record in the Patent Office?

A. By documents, I mean I would have brought a copy of the application, the office action and so forth.

Q. Did you present any drafts of amendments or anything to the examiner?

A. I don't recall.

Q. Do you recall what was said during that interview?

A. What is set forth in the first paragraph of the remarks section of this amendment is very clear to me as the agreement we entered into which I felt would make the claims allowable.

Q. How long did the interview last?

A. I don't know.

Q. Was it five, ten minutes, fifteen minutes?

A. I really have no recollection.

Q. And this was all that was said, this agreement?

A. I am sure we discussed it and tried to present our position why the claim as presented was allowable and I am sure the examiner wanted us just to add some more to the claim as evidenced by that first paragraph.

Q. Now, the first sentence of the last paragraph on that page, Mr. Seligman, you state, "Applicant by his discovery presents improved apparatus whereby the general public may employ their television receivers in their individual homes for uses other than merely viewing telecast material displayed on the screens thereof." Did you believe that that statement was accurate as of the time that you wrote it?

A. Sure it is accurate.

Q. You go on to state, "Applicant discloses apparatus whereby the standard television receiver currently used in the home can be further employed for the playing of games and other similar activity." Was that statement accurate as of the time you wrote it?

A. It was an accurate statement, yes.

Q. Is there any reason why you didn't call the French patent to the attention of the examiner at this time?

A. Absolutely.

Q. What is that?

A. Among others, it is clearly irrelevant. Certainly our previous application was a lot more relevant than the French patent.

Q. And you believed at that time that your prior application was a reference against this 284 application?

MR. ANDERSON: I object to the question as lacking a foundation, asking for a legal conclusion, asking for an opinion of the witness; and I instruct the witness not to answer.

Q. As of that time, do you believe that the 480 patent was more relevant than the French patent?

A. Clearly.

Q. And this is the reason why you didn't call the French patent to the examiner's attention?

A. I don't know if that is exactly true; I thought the French patent was irrelevant. I didn't see where it had any bearing on this application.

Q. And that the Baer application was more relevant?

A. Was more relevant?

Q. Yes.

A. Oh, sure.

Q. On page 24 of that amendment, you state, "Although Kiesling's 180-degree reversal is functionally similar to applicant's wall bounce scheme, applicant never claims wall bounce alone, but only in conjunction with a hit spot generation to cause a hit spot to bounce away from the edges of the screen much like a ball bouncing off a wall."

Did you believe that that statement was accurate at the time that you wrote it?

A. I am sure I did. In this last statement, surely the wall bounce referred to here is not the wall

bounce we have been referring to previously.

Q. Do you recall citing the French patent and the Hermann patent No. 3,046,676 in connection with the prosecution of the reissue applications?

A. I have a recollection in that regard.

Q. Is there any reason that you can recall for not calling the Hermann patent to the attention of the examiner during the prosecution of the 284 patent?

A. I didn't think it was very relevant.

Q. But you did feel it was relevant to the reissue?

MR. ANDERSON: I object, he hasn't so testified. There is foundation for the question.

THE WITNESS: I felt the reason that it was probably called to the examiner on the reissue, I believe it was predicated on the fact that parties in this lawsuit have cited it as prior art and we thought it would be wise to cite it to the examiner.

Q. What does D-2580 refer to?

A. That is how we refer to the disclosure and so forth pertaining to the 284 patent.

Q. I place before you a document which purports to be

a letter from you to your English associate dated December 30, 1970, which we will mark as Exhibit 79 and I will ask you if you wrote that on or about the date that it bears?

A. I would assume so.

(Whereupon, Exhibit 79  
was marked for identification.)

57 Q. Does that letter relate to the foreign counterpart to the 284 application?

A. Yes, it does.

58 Q. Did you believe that the statements that you made in that letter were accurate as of the time that you made them?

A. Yes, sir, I assume I did.

59 Q. I place before you a document which purports to be an amendment filed in the Canadian Patent Office on December 10, 1971, which we will mark as Exhibit 80 and I will ask you if you wrote that amendment on or about December 10, 1971?

A. No.

160 Q. Do you know who wrote that amendment?

A. I assume someone in the office of our Canadian.

associate.

Q. Do you instruct the Canadian associate as to what to put in the amendments?

A. We supply him with remarks, suggestions, recommendations, yes.

Q. Do you approve of the amendments prior to their being filed?

A. No.

Q. They just file them and you don't check them out to see if they reflect the proper arguments and statements?

A. Not generally.

(Whereupon, Exhibit No. 80  
was marked for identification.)

Q. Did you determine from this amendment what foreign counterpart it relates to?

MR. ANDERSON: You mean the foreign counterpart of that U. S. case?

MR. FLANNERY: Yes.

THE WITNESS: I would say the 284 patent.

Q. I place before you a document which purports to be

a letter from you to your Swedish associate, dated December 27, 1971, which we will mark as Exhibit 81, and I will ask you if you wrote that on or about the date that it bears?

A. I would say so.

(Whereupon, Exhibit No. 81 was marked for identification.)

Q. Does that document relate to the foreign counterpart to the application which issued as the 284 patent?

A. I believe it does.

Q. Did you believe that the statements that you made in that letter were accurate as of the date that you wrote the letter?

A. I would assume so.

Q. I place before you a document which purports to be a letter from you to your German associate dated May 31, 1972, which we will mark as Exhibit 82, and I will ask you if you wrote that on or about the date that it bears?

A. I would assume so.

(Whereupon, Exhibit No. 82  
was marked for  
identification.)

69 Q. Does that relate to the foreign counterpart of the  
application which issued as the 284 patent?

A. Yes.

70 Q. Did you believe that the statements that you made  
in that document were accurate at the time that you  
wrote them?

A. I had no reason to believe otherwise.

71 Q. I place before you a document which purports to be  
a letter from you to the Canadian associate dated  
September 13, 1972, which we will mark as  
Exhibit 83, and I will ask you whether you wrote  
that on or about the date that it bears?

A. I would assume so.

72 Q. Does that relate to the Canadian counterpart of  
the application which issued as the 284 patent  
in suit?

A. I would believe so.

73 Q. Do you believe that the statements that you made  
in this document were accurate at the time that  
you wrote them?

A. I believe so.

(Whereupon, Exhibit  
No. 83 was marked for  
identification.)

74 Q. I place before you a document which purports to be  
a copy of a letter from you to your German  
associate dated October 3, 1972, and I will ask you  
if you wrote that on or about the date that it  
bears?

A. I believe so.

75 Q. Does that document relate to the German counterpart  
to the application which issued as the 284 patent?

A. I believe so.

76 Q. Do you believe that the statements that you made  
in that letter were accurate as of the time you  
wrote them?

A. I believe so.

(Whereupon, Exhibit  
No. 84 was marked  
for identification.)

77 Q. I place before you a document which purports to be

a letter from you to your Swedish associate dated November 2, 1972, which we will mark as Exhibit 85, and I will ask you if you wrote that on or about the date that it bears?

A. I believe so.

(Whereupon, Exhibit  
No. 85 was marked  
for identification.)

Q. Does that document relate to the Swedish counterpart of the application which issued as the 284 patent in suit?

A. Yes.

Q. Did you believe that the statements that were made in there were accurate at the time that you made them?

A. I would believe so.

Q. I place before you a document which purports to be a letter from you to your Dutch associate dated April 26, 1973, which we will mark as Exhibit 86, and I will ask you whether you wrote that on or about the date that it bears?

A. I believe so.

81 Q. Does that document relate to the Dutch counterpart  
of the application which issued as the 284 patent?

A. I believe so.

82 Q. Did you believe that the statements that you made  
in that letter were accurate at the time that you  
made them?

A. I believe so.

(Whereupon, Exhibit No. 86  
was marked for identification.)

83 Q. I place before you a document which purports to  
be a letter from you to the Australian associate  
dated June 1, 1973, which we will mark as  
Exhibit 87, and I will ask you if you wrote that  
on or about the date that it bears?

A. I believe so.

84 Q. Does that document relate to the Australian counterpart  
to the application which issued as the 284 patent?

A. I believe so.

85 Q. Were the statements that you made in this document  
accurate at the time that you made them?

A. I believe so.

(Whereupon, Exhibit

No. 87 was marked.

for identification.)

Q. I place before you a document which purports to be a letter from you to your Argentine associate dated August 21, 1973, and I will ask you if you wrote that on or about the date that it bears?

A. I believe so.

Q. I will mark that as Exhibit 88; and does that relate to the Argentina counterpart to the application which issued as the 284 patent?

A. Yes.

Q. Are the statements that you made - - - Did you believe that the statements made in this document were accurate at the time that you made them?

A. I believe so.

(Whereupon, Exhibit

No. 88 was marked

for identification.)

Q. I place before you a document which purports to be a copy of a letter from you to your Japanese associate dated January 4, 1974, which we will

mark as Exhibit 89, and I will ask you if you wrote that on or about the date that it bears?

A. I believe so.

Q. Does that document relate to the Japanese counterpart to the application which issued as the 284 patent?

A. Yes.

Q. Did you believe that the statements made in this document were accurate at the time that you made them?

A. I believe I did.

(Whereupon, Exhibit

No. 89 was marked

for identification.)

Q. I place before you a document which purports to be a letter from you to the Argentina associate dated February 26, 1974, and I will ask you if you wrote that on or about the date that it bears?

A. I believe so.

Q. Does the document relate to the Argentina counterpart to the application which issued as the 284 patent?

A. I believe so, yes.

94 Q. Did you believe that the statements made in that document were accurate as of the time that you made them?

A. I believe so.

(Whereupon, Exhibit  
No. 90 was marked  
for identification.)

5 Q. I place before you a document which purports to be a letter from you to your Mexican associate dated May 21, 1974, which we will mark as Exhibit 91 and I will ask you if you wrote that on or about the date that it bears?

A. I believe so.

Q. Does that relate to the Mexican counterpart to the application which issued as the 284 patent?

A. I believe so.

Q. Did you believe that the statements that you made in that document were accurate at the time that you made them?

A. Yes, I did.

(Whereupon, Exhibit  
No. 91 was marked

98 Q. for identification.)  
I place before you a document which purports to be  
a letter from you to the Dutch associate dated  
February 27, 1975, which we will mark as  
Exhibit 92, and I will ask you if you wrote that  
on or about the date that it bears?

A. I believe I did.

9 Q. Does that relate to the Dutch application which  
is a counterpart to the application which issued as  
the 284 patent?

A. Yes, it does.

Q. Did you believe that the statements that you made  
in that document were accurate at the time that  
you made them?

A. I believe I did.

(Whereupon, Exhibit  
No. 92 was marked  
for identification.)

Q. What was your first knowledge of the use of a  
fixed hit spot in a TV game?

A. I don't recall.

Q. Was it prior to writing the application for the

285 patent?

A. I can't say for sure. I assume I must have known about it. I generally look into the matter somewhat before starting to write.

Q. Your best recollection is that you do remember?

A. No, I don't remember at all. I have no recollection of knowing about a hit spot prior to starting to write that application.

MR. ANDERSON: A fixed hit spot. The question was a fixed hit spot.

THE WITNESS: I know, that is what I said. That is what I meant to say. I have no recollection of that before I started to write.

Q. Do you have any recollection?

A. No. Any recollection about - - -

Q. The use of a fixed hit spot in a TV game.

A. Before I started writing?

Q. Yes.

A. No.

Q. You wrote the application which was filed and issued as the 285 patent, didn't you?

A. Yes, I did.

Q. What was your first knowledge of the subject matter which you wrote into that application?

A. I don't know. I don't recall.

Q. Did you see a device constructed --- Did you see a device employing the fixed hit spot in a TV game prior to your starting to write the application?

A. I don't remember.

Q. Do you recall what you reviewed prior to starting to write the application which issued as the

285 patent?

A. No.

Q. Is there anything that would refresh your recollection as to when you obtained your first knowledge of the use of a fixed hit spot in a TV game?

A. I don't know.

Q. You don't know of anything that would refresh your recollection?

A. Right.

Q. Would your files refresh your recollection?

A. I don't know if they would or not, I can't say.

Q. I place before you documents which were produced

for our inspection and they appear to be your working files for the 285 application, could you go through those and determine what your first knowledge of the use of a fixed hit spot in a TV game was?

A. I don't find anything in here that would so refresh my recollection.

215 Q. Well, what is your earliest recollection of that?

A. Regarding this application, all I recall is that I had more than the usual amount of - the number of discussions with the inventors in the preparation of the application.

16 Q. Who decided or who made the decision as to who was to be named as the inventor on the application which issued as the 285 patent?

A. I believe both Mr. Etlinger and myself.

17 Q. What investigation did you make as to inventorship?

A. Talking to the three parties involved trying to separate out one or more of the individuals as the inventors and after a substantial discussion with them, it was our considered opinion that all three were in fact inventors of this invention.

8 Q. Of all of the subject matter of the claims?

219 A. I believe so.

Q. What did Mr. Baer contribute to the subject matter of that application?

MR. ANDERSON: I object to the question; are you asking for his present knowledge?

MR. FLANNERY: During his investigation.

MR. ANDERSON: What he thought at the time that he made this investigation somewhere around 1972 or earlier?

MR. FLANNERY: When he determined who the inventors were.

THE WITNESS: I don't believe I could identify his contribution nor any specific contributions of Mr. Rusch or Mr. Harrison. I believe the three of them were working together, they could not separate what each had done and I think the invention evolved out of the efforts of the three parties and there was no other way but to name all three of them as inventors.

Q. Was this application a catch-all for all the game features not covered in the other applications?

MR. ANDERSON: I object to the

question as vague and ambiguous. Would you like to withdraw it?

MR. FLANNERY: No.

THE WITNESS: A catch-all?

Q. Yes.

A. No, I wouldn't say that.

Q. Right now you have no recollection as to what you determined at the time that you filed the application as to the contribution of each of the inventors?

A. I don't believe at the time that I filed it that individual contributions of the inventors could be ascertained. And it was a joint effort and it was clearly our opinion when we talked to them that we could not distinguish contributions of one versus the other.

Q. Did you determine that the three named inventors were the inventors of all the subject matter only on the fact that the three inventors worked on the project jointly?

A. No.

Q. What else was involved?

A. They believed that they all contributed. That the

subject matter was worked on together, that they couldn't distinguish one's effort from another one's effort. Many applications, but that they all worked together and we just could not select two of these named individuals as inventors. You couldn't split out a distinct contribution that would make one or more the inventors.

25 Q. Did all three have the idea of having a bounce off a fixed image?

A. I don't know. There was no one at the time who could stand up and say it is my invention.

6 Q. Was the subject matter of this application which issued as the 285 patent conceived after the invention of the subject matter of the 284 patent?

MR. ANDERSON: I object to the question as asking for an opinion and based upon his present knowledge and a matter on which he is not qualified to testify. It would be hearsay. Conception is a mental process.

THE WITNESS: Will you repeat the question, please?

(Whereupon, the previous question was read back

by the reporter.)

THE WITNESS: I believe it was.

227 Q. That was your understanding?

A. Yes.

228 Q. Is there any reason why you did not cite the French patent and the Hermann patent at the Patent Office during the prosecution of the 285 patent?

A. I didn't believe they were relevant.

229 Q. Why not?

A. Why not?

230 Q. Yes.

A. Because they didn't include fixed hit spots and interaction with another spot.

31 Q. During the prosecution of the 480 patent and the 284 patent and the 285 patent, did you try to maintain a distinction in the claimed subject matter?

MR. ANDERSON: I object to the question as asking for an opinion.

MR. FLANNERY: An opinion; I am asking him what he did.

MR. ANDERSON: Will you read

the question?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: I certainly tried to keep the claims within the bounds of the application. I didn't attempt to introduce new matter in any of the applications. I guess generally I would say yes to that.

232 Q. Did you attempt to claim one type of subject matter in the 280 patent and another type in the 284 patent and another type in the 285 patent?

A. Yes, I think there were three distinct inventions and that is what I was attempting to claim.

233 Q. What were those three distinct inventions?

MR. ANDERSON: I object to the question, it is asking for an opinion on the invention, the claims speak for themselves and I instruct the witness not to answer.

34 Q. In your maintaining of the distinction between the claims in the three applications, what criteria did you use in determining the distinction?

MR. ANDERSON: Same objection and same instruction. The claims speak for themselves, the claims are the subject matter of this litigation; I don't think there is any relevance at all to what this witness was thinking or what his opinion is at this time.

MR. FLANNERY: I didn't ask him what his opinion was at this time, I asked him what his opinion was at that time.. He was doing the prosecution.

MR. ANDERSON: The claims speak for themselves and I instruct the witness not to answer.

- 235 Q. Do you take your attorney's advice?
- A. Absolutely.
- 36 Q. Did you consider informing Examiner Trafton of the pendency of the 480 patent?

MR. ANDERSON: I am sorry, is that a question; I didn't hear it. Would you read it back, please?

(Whereupon, the previous question was read back

by the reporter.)

MR. ANDERSON: I object to the question in that it is not fixed in time.

237 Q. During the prosecution of the 284 and 285 applications.

A. I have a belief that he knew of the pendency of that application.

238 Q. What do you base that belief on?

A. I have a vague recollection that we discussed it with him. I also have a very vague recollection that he was at a demonstration which we held and an interview in the prosecution of the 480 patent.

MR. ANDERSON: It is also recited in the specifications of those applications, of course. The 284 and the 285, Mr. Flannery.

MR. FLANNERY: The patent speaks for itself?

MR. ANDERSON: Right, precisely.

89 Q. Did Examiner Trafton ever ask you to elect as to which subject matter came first as far as the 480 patent, the 284 patent and the 285 patent

is concerned?

40 A. I don't recall.

Q. I place before you a document which purports to be a letter from you to your German associate dated June 5, 1972, which we will mark as Exhibit 93, and I will ask you if you wrote that on or about the date that it bears?

A. It is hard for me to say on this one.

(Whereupon, Exhibit

No. 93 was marked

for identification.)

241 Q. Why do you say that?

A. On the other ones there was an indication when a particular letter was mailed and that was helpful in determining the date. This one, there is such an indication, but the copy is so poor that it can't be read.

242 Q. Do you have any reason to believe that you didn't write that on or about that date?

A. I have no reason to believe I didn't.

243 Q. In the normal course of business, would that letter have been sent out by you on that date?

A. Normally yes unless there was some reason it was held up. It appears that it was mailed sometime in 1972.

244 Q. Do you have a habit of dating documents at a different date than you mail them out?

A. No. Documents sometimes do get dated and hang around for a while.

245 Q. But it was written by you?

A. Yes, I have no reason to believe it wasn't.

246 Q. And it was mailed?

A. I believe it was. There is sufficient indication that it was mailed.

247 Q. Does that document relate to the German counterpart to the application which issued as the 285 patent?

A. I believe it does. Yes, it does.

248 Q. Did you believe that the statements that you made in this letter were accurate at the time that you made them?

A. I have no reason to believe otherwise.

49 Q. I place before you a letter that appears to be a letter from you to the German associate dated July 5, 1972, and ask you if that was mailed on or about the time that it was written? We will

mark it as Exhibit 94.

A. I believe so, yes.

Q. Does that relate to the German counterpart of the application that issued as the 285 patent?

A. Yes.

Q. Do you believe that the statements that you made in this document were accurate at the time that you made them?

A. I believe so.

(Whereupon, Exhibit

No. 94 was marked

for identification.)

Q. I place before you a document which purports to be a letter from you to your associate in Israel dated September 27, 1972, which we will mark as Exhibit 95, and I will ask you if you wrote that on or about the date that it bears?

A. Probably.

Q. Does the document relate to the Israel counterpart to the application which issued as the 285 patent?

A. Yes.

Q. When you wrote that document, did you believe that

the statements that you made in there were accurate?

A. Yes.

(Whereupon, Exhibit

No. 96 was marked

for identification.)

255 Q. I place before you a document which purports to be  
a letter from you to your Swedish associate dated  
November 2, 1972, which we will mark as Exhibit 96,  
and I will ask you if you wrote that on or about  
the date that it bears?

A. I believe so.

256 Q. Does that relate to the application which issued  
as the 285 patent?

A. Yes.

57 Q. At the time that you wrote that document, did you  
believe that the statements were accurate?

A. I did.

(Whereupon, Exhibit

No. 96 was marked

for identification.)

58 Q. I place before you a document which purports to be

a letter from you to your Swedish associate dated June 3, 1973, which we will mark as Exhibit 97, and I will ask you if you wrote that on or about the date that it bears?

A. I believe I did.

Q. Does that relate to the Swedish counterpart of the application which issued as the 265 patent?

A. Yes.

Q. At the time you wrote the document, did you believe that the statements made therein were correct?

A. I believe I did.

(Whereupon, Exhibit  
No. 97 was marked  
for identification.)

Q. I will place before you a document which purports to be a letter from you to your Dutch associate dated July 12, 1973, which we will mark as Exhibit 98, and I will ask you whether you wrote that on or about the date that it bears?

A. I believe I did.

Q. Does the document relate to the Dutch application which is the foreign counterpart to the application

which issued as the 285 patent?

A. Yes.

Q. And to the time that you wrote that document, did you believe that the statements that you made therein were accurate?

A. I did so believe.

(Whereupon, Exhibit

No. 98 was marked

for identification.)

Q. I place before you a document which purports to be a letter from you to your Dutch associate dated March 26, 1975, which we will mark as Exhibit 99 and I will ask you if you wrote that on or about the date that it bears?

A. It bears Mr. Etlinger's signature, not mine. I believe I at least wrote part of this on or about that date which appears.

Q. Does that document relate to the Dutch counterpart to the application which issued as the 285 patent?

A. Yes.

Q. At the time that you wrote that, did you believe that the statements therein were accurate?

267 A. Those statements that were written by me in this letter.

Q. Could you identify which ones were written by you?

A. It is hard for me to separate which were my statements and which were Mr. Etlinger's statements. I have a belief that I probably wrote the letter and he probably made changes thereto.

(Whereupon, Exhibit  
No. 99 was marked  
for identification.)

68 Q. I place before you a document which purports to be a letter from you, a copy of a letter from you to Mr. Williams dated May 21, 1975, which we will mark as Exhibit 100, and I will ask you if you wrote that on or about the date that it bears?

A. I believe so.

69 Q. At the time you wrote that, did you believe that the statements made therein were accurate?

A. I believe I did.

(Whereupon, Exhibit  
No. 100 was marked  
for identification.)

Q. Mr. Seligman, do you recall that you requested the Patent Office to issue the 284 and 285 applications on the same day?

A. Yes.

Q. Can you give us the reasons why you requested that?

A. I was instructed to by Mr. Atlinger.

Q. For what reasons? Did he tell you the reasons?

A. I think he vaguely discussed obviating double patenting problems or something like that.

Q. Any other reasons?

A. Not that I recall.

Q. In preparing the reissue application for the 284 patent, did you prepare the claims?

A. The 284 reissue?

Q. Yes.

A. I may have had something to do with it.

Q. Who did prepare the claims, if you know?

MR. ANDERSON: I object on the ground of attorney-client privilege and work product and I instruct the witness not to answer.

Q. Did you have any discussions concerning the filing of the reissue applications with the inventors or anyone else?

A. Yes.

Q. Whom did you have discussions with?

A. I certainly had discussions with the inventors.

Q. Anyone else?

A. Let's have the question again, please?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: Mr. Etlinger.

Q. Anyone else?

A. Mr. Anderson.

Q. Anyone else?

A. Mr. Williams.

Q. Anyone else?

A. Mr. Cesari.

Q. Anyone else?

A. Mr. Broidy.

Q. Anyone else?

A. Mr. Trafton.

Q. Anyone else?

A. Not that I can think of at present.

Q. What discussions did you have with the inventors?

87 A. I explained to them why the reissues were being filed.

Q. What did you tell them?

A. I told them that our opponents in the lawsuits had expressed defenses that the patents, the claims of the patents, did not cover the coin-operated games and even though it was our opinion that they did, in order to clear the air and leave no doubt as to whether or not they did, we wanted to file these reissues; and it was their opinion that their invention certainly was intended to cover more than just a home game.

38 Q. Was it Mr. Rusch's opinion that the claims of his application covered coin-operated games?

MR. ANDERSON: I object to the question as asking for speculation. You want to know what Mr. Rusch told this witness?

MR. FLANNERY: Yes, what Mr. Rusch told you.

THE WITNESS: I don't know what he said. Mr. Rusch like many inventors has great problems with patent claims, but Mr. Rusch was very adamant in his belief that he certainly had

an invention which was infringed by the games as evidenced by the memorandum you presented earlier.

Q. Coin-operated games?

A. Yes.

Q. Did Mr. Baer, Mr. Harrison and Mr. Rusch express the view that they believed that the claims of their 285 patent covered coin-operated games?

A. I am sure they did because when they signed the declaration, we explained to them what the purpose was and what have you and went through the declaration so they would understand what it was all about.

Q. Were the inventors consulted prior to the preparation of the declarations?

A. I have a recollection of Mr. Baer being somewhat involved; I don't recall with respect to Mr. Harrison and Mr. Rusch.

Q. When you first talked to Mr. Rusch about the filing of the reissue applications, did you have a draft of the declaration prepared?

A. I don't recall.

Q. When you submitted the draft of the declaration to Mr. Rusch for signature, did he make any changes

in it?

A. I don't believe so.

Q. When you submitted the draft of the declaration to Mr. Harrison, did he make any changes in it?

A. Not that I recall.

Q. When you submitted the draft of the declaration to Mr. Baer, did he make any changes in it?

A. I don't believe so.

Q. Did any of the inventors make any comments with respect to the declarations?

A. If they did, I don't recall them.

Q. I place before you the file history of the reissue for the 284 patent and it states in there, "The 284 patent is partly inoperative by reason of a defective specification." What was defective about the specification?

A. That it was interpreted by our opponents in this lawsuit as not to include other than home-type TV.

Q. Isn't it a fact, Mr. Seligman, that these declarations were prepared before there were any opponents in the lawsuits?

A. It could be. If I am wrong about that, there was

at least expressed by the manufacturers of coin-operated games that they didn't infringe.

Q. When you explained this declaration to the inventors, did you indicate to them that in effect by defective specifications, you were referring to the claims?

A. I don't remember. I have no recollection of specifics of what I told them.

Q. The declaration refers to an exclusive licensee, who is that, Mr. Seligman?

A. Magnavox Company.

Q. And it refers to both said Letter's Patents, what patents is it referring to?

MR. ANDERSON: I object, you are taking a word out of context. Are you referring to the first page of the declaration?

MR. FLANNERY: Yes, it says the exclusive licensee of said Letter's Patents has attempted to both - - -

MR. ANDERSON: No it doesn't, it says, "Both said Letter's Patent and other United States Letter's Patent."

MR. FLANNERY: I am sorry,

I misread it.

Q. Over on the second page of the declaration, it says, "That in the context of my invention and in the context of the description thereof" - - -

MR. ANDERSON: Can you tell me what line you are reading from, approximately?

MR. FLANNERY: Five.

MR. ANDERSON: Thank you.

Q. "In said Letter's Patent 3,659,284, I have always understood and believed 'television receiver' and 'standard television receiver' to mean any standard cathode ray tube incorporating circuitry for a raster-type scan." Did Mr. Rusch agree with that statement?

A. Yes, he did.

Q. There is a similar statement in the reissue declaration for the reissue of the 285 patent, did the three inventors of that patent agree with that statement?

A. I have no reason to believe they didn't and I am sure they would not have signed the declaration if they believed otherwise.

Q. How did this error arise?

MR. ANDERSON: I object, what error?

MR. FLANNERY: The error in the original patent, the 284 patent.

MR. ANDERSON: Is that word in the declaration?

MR. FLANNERY: Yes, the fourth line from the bottom.

THE WITNESS: You are talking about the next to the last line of page 2?

- Q. The fourth line up. Through error and without any deceptive invention - - -
- A. Not including claims of that scope, claims of that form?
- Q. Yes, how did that arise?
- A. By my not putting them in.
- Q. Well, didn't you understand the subject matter?
- A. I understood the subject matter.
- Q. You mean it was an error on your part?
- A. I should have perhaps made it clearer what I meant by a television receiver.
- Q. Then the error referred to is your error, is that correct?

A. It can't be only my error, it has to be the inventors' error, it is their application that they are signing too and which they are claiming is their invention.

Q. So it was both your errors?

MR. ANDERSON: I object, the document speaks for itself. The witness has stated an answer to that question already and the witness is the attorney, the representative of the inventor, and speaks on behalf of the inventor.

Q. You can answer the question, Mr. Seligman.

A. I guess it could be looked upon as both the attorneys' error and the inventors' error.

Q. Well, could you tell us what was the reason why you made that error?

MR. ANDERSON: I object to the question as asking for speculation and it is irrelevant.

MR. FLANNERY: It is very relevant, Mr. Anderson, it is required by the rules of the patent Office to state that and you didn't state it in your oath.

MR. ANDERSON: The document

speaks for itself.

MR. FLANNERY: It didn't state it, that is why I am asking it.

MR. ANDERSON: I disagree.

MR. FLANNERY: The rules of the Patent Office require the applicant to state how the error arose. That is all I am asking here of Mr. Seligman who is responsible for the prosecution of the 284 and 285 patents as to how the error arose.

MR. ANDERSON: He has already stated how the error arose, if there is any error, and the oath does also.

MR. FLANNERY: Well, maybe you could explain it to me.

MR. ANDERSON: I see no purpose in you and I having a colloquy at this time on the subject. I consider the last question an improper exploration into the attorney's opinion, judgment - work product - and I instruct the witness not to answer.

MR. FLANNERY: In other words, you are refusing to allow us to go into how the

error arose that is referred to in the reissue declarations?

MR. ANDERSON: You have gone into that with this witness and you have gone into that same subject with the inventors. You have explored that fully. You have now asked the witness to speculate as to reasons underlying - underlying reasons, and I think the record is clear.

MR. FLANNERY: All right; I will ask him what facts were involved in the error which occurred during the prosecution of the 284 and 285 application.

MR. ANDERSON: He has already answered that question. The facts that are involved are what arose when the manufacturers of coin-operated games took a position that was contrary to what the - and he has testified to this - what he and the inventors thought the patents covered.

MR. FLANNERY: Could we stipulate that that is the error and the only error?

MR. ANDERSON: No, the record speaks for itself.

MR. FLANNERY: Then let him

answer. I am willing to stipulate to exactly what you just said.

MR. ANDERSON: The document speaks for itself.

Q. All right; how did the error arise?

A. How did the error arise?

Q. Yes.

A. With the interpretation put on the claims by the manufacturers of coin-operated games.

Q. But, as far as the inventors were concerned and you are concerned, that was not an error?

A. Do you want to repeat that?

(Whereupon, the previous question was read back by the reporter.)

THE WITNESS: Well, it led to some doubt in the minds of the reader of the patent as to the coverage.

Q. But you believe the coverage was proper?

A. I know what I intended to write claims to cover.

Q. And at the time that this declaration was executed, do you believe that the claims did cover coin-operated

games?

MR. ANDERSON: I object, you are asking for the opinion of this attorney; it is irrelevant and it is a privileged matter. The declaration is clear, it says, "That the inclusion of terms within claims of said Letter's Patent 3,659,285, such as claims 25 and 51 which might form a basis for any party to take the position that those claims do not include television games using as a video device either a television monitor or a television receiver intended to receive broadcast television signals, but with the radio frequency or the video portions bypassed by disability was through error and without any deceptive intentions;" that is at the bottom of page 2 of the declaration of the reissue of the 284 patent.

Q. But, as far as you are concerned, the claims did cover those structures?

A. Yes.

Q. There was an interview prior to filing the reissue applications, Mr. Seligman, which you attended with Mr. Williams and you interviewed the examiner, Mr. Trafton; what was the purpose of that interview?

MR. ANDERSON: I object to the question on the ground that "interview" has a special meaning and I think there is no foundation for the question in that there has been no establishment of any activity for a special meeting.

MR. FLANNERY: Use discussion for interview.

MR. ANDERSON: All right; do you want to restate the question?

MR. FLANNERY: No.

THE WITNESS: Merely to discuss with him and inform him of what we were doing.

Q. Why did you want to inform him of what you were doing?

A. Just to get his feelings in the matter.

Q. Why did you want to get his feelings in the matter?

A. With the examiner in the parent case - - -

Q. Would you have filed the reissue applications anyway?

A. Would we have?

Q. Yes.

A. If he had given us a negative opinion?

Q. Yes.

A. I don't know, we never discussed that question.

Q. Did you discuss the declarations with Examiner Trafton?

A. Not in detail, we told him why we were filing the reissues.

Q. Did you show him the declarations?

A. I don't recall showing him the declarations.

Q. Did you have any discussions with Examiner Trafton prior to the day or two before the filing of the reissue applications?

A. Discussions with him?

Q. Yes, with respect to the filing of the reissue applications.

A. Yes, I think we already just said that.

Q. As I understand it, you had the discussion a day or two prior to the filing of the application?

A. Yes.

Q. Did you have a discussion prior to that time?

A. Regarding this?

Q. Yes.

A. I don't recall any, perhaps a phone call to

arrange this meeting.

Q. What did you say during that phone call?

A. I have no idea.

Q. Did Mr. Trafton examine the declarations at that discussion?

A. I don't believe so.

Q. Did you have any documents with you at that discussion?

A. Yes..

Q. What documents did you have with you?

A. The reissue applications.

Q. Did you submit those to the examiner?

A. No.

Q. Did you show them to the examiner?

A. I don't recall showing him.

Q. What do you recall showing the examiner?

A. I don't think we showed him anything. I think we discussed the situation with him and discussed why we were filing the reissues.

Q. What did you exactly tell him?

A. That coin-operated game manufacturers took the position that the claims did not cover their equipment.

Q. That is all you told him?

A. I am sure the discussion went on for more than thirty seconds to make that statement, but we just discussed that general situation as best as I can recall.

Q. What did then Examiner Trafton say?

A. There was no doubt in his mind that the claims in the original application covered coin-operated games.

Q. Did he say that in those exact words?

A. No, sir.

Q. What did he say?

A. I have no idea.

Q. That is your characterization of what he said?

A. That is a pretty good characterization of what he said because certainly we liked that opinion from him.

Q. Did you know Examiner Trafton prior to the filing of the reissue applications?

A. Sure.

Q. Where did you know him from?

A. We had an interview with him on the original applications.

Q. Have you seen Examiner Trafton outside of the Patent Office?

A. No.

Q. There was also an interview with the examiner during the prosecution of the reissue applications, what was the purpose of that interview?

A. I don't recall.

Q. Do you recall an interview with the examiner on the reissue, the 284 reissue, after that patent was allowed?

A. An interview with the examiner after the patent was allowed?

Q. Yes. Maybe I am using the wrong term, after the examiner had allowed all the claims.

A. I have a vague recollection of wanting to cite some new art; I don't know if we had an interview regarding that matter or not. Is that what you are referring to?

Q. Yes, do you recall any interview?

A. Unfortunately, I don't. I can't recall.

Q. Well, the file history indicates that Mr. Williams was at the interview, were you also at the interview?

A. All right; no, I wasn't.

Q. The file histories indicate that you wrote the amendments or letters to the Patent Office after the interview by Mr. Williams.

A. That is correct.

Q. How did you obtain the information of what was discussed at the interviews from Mr. Williams?

A. I don't recall.

Q. Did Mr. Williams send you a letter?

A. I don't recall.

Q. You did talk to Mr. Williams, though, or received some communication from him after the interview?

A. I am sure we must have, we authorized him to have the interview; I am sure we must have communicated. In fact, I remember in response to that interview, I wrote a letter thanking him for seeing Mr. Williams and Mr. Anderson and then later found out that Mr. Anderson was not at the interview.

MR. FLANNERY: That is all I have.

(Interrogatories by Mr. Anderson.)

Q. All right, Mr. Seligman, I place before you a collection of documents which are stapled together and which I will have the reporter mark as

Sanders' Exhibit 101-1 through 101-7 and ask you if those are documents which you referred to during the direct examination, if you recall?

A. Yes, they are.

Q. And what is Sanders' Exhibit 101-1?

A. It is a letter to our Swedish associate requesting that he obtain a translation of French Patent No. 1,190,470 prior to responding to his inquiry.

Q. Did you write the original of that letter?

A. Yes.

Q. And do you know whether or not it was mailed?

A. Yes.

Q. Was it mailed, the original?

A. The letter indicates that it was mailed on January 25, 1971.

Q. Do you believe it was mailed on or about that date to the Swedish associate?

A. I do believe that.

MR. FLANNERY: Objection.

as to his present belief.

Q. Will you refer to Exhibit 101-2 and state what that is?

A. That is a letter from - - -

MR. FLANNERY: Objection, the document speaks for itself.

THE WITNESS: That is a letter from our Swedish associate to Sanders enclosing a translation of French Patent No. 1,180,470.

Q. What is the date of that letter?

MR. FLANNERY: I will stipulate it is February 18, 1971, and I will stipulate that it was received by Sanders on February 19, 1971.

MR. ANDERSON: All right; and do you want to stipulate that it comes from the Sanders' files?

MR. FLANNERY: Yes.

MR. ANDERSON: And it is the letter by which you ask Mr. Seligman questions on direct examination?

MR. FLANNERY: I didn't ask him any questions on it.

MR. ANDERSON: Well, he referred to it.

MR. FLANNERY: You ask him.

MR. ANDERSON: You asked him questions about which he responded by referring to

that letter.

Q. Mr. Seligman, can you identify Sanders' Exhibits 101-3 through 101-7?

A. It is a five-page document bearing the title translation of French Patent 1,180,470 published June 4, 1959.

Q. Was there an attachment to the letter Exhibit 101-2, to the best of your knowledge, when it was received on February 21, 1971, in the Sanders Patent Department?

A. I believe so.

Q. And what was the attachment, to the best of your knowledge?

A. Exhibit 101-3 through 101-7.

Q. To the best of your knowledge, had the Sanders Patent Department ever received a translation of French Patent No. 1,180,470 prior to receiving the translation, Exhibit 101-3 through 101-7?

A. To the best of my knowledge, Sanders never did receive such translation prior to that.

MR. ANDERSON: No further questions.

(Whereupon, Exhibits 101-1  
to 101-7 of

through 101-7 were  
marked for  
identification.)

MR. FLANNERY: Mr. Seligman,  
this translation which is attached to this  
Exhibit 101-2 is not an exact copy of the  
translation which you received, is that correct?

THE WITNESS: That is correct.

MR. FLANNERY: No further  
questions.

(Interrogatories by Mr. Anderson.)

Q. Mr. Seligman, how does the attachment, 101-3 through  
101-7, differ, if you know, from the translation  
which was received from the Swedish associate on or  
about February 19, 1971?

A. I believe a letter "s" has been added to a word  
on the second line of 101-7.

Q. Do you know who added that "S"?

A. Perhaps I did, perhaps someone else, I am not sure.

Q. And do you know when it was added?

A. I believe it was sometime not too long after we  
received this translation.

Q. Why did you add the "S" in the second line of

Exhibit 101-7 after receiving it?

A. I understand the word in the French language is receivers, not receiver.

MR. ANDERSON: No further questions.

MR. FLANNERY: Mr. Seligman, in your experience, does it take more than one day to receive a letter from Sweden?

A. Yes.

MR. FLANNERY: No further questions.

MR. ANDERSON: Mr. Seligman, Mr. Flannery has inquired about the time for receiving a letter from Sweden, can you explain why the Swedish letter, Exhibit 101-2, is dated February 18, 1971, while the received stamp appears to show that it was received in the Patent Department on February 19, 1971?

A. I can't say positively, but more than once, on a number of occasions - - -

MR. FLANNERY: Objection, hearsay, opinion.

THE WITNESS: The docket clerk

did not advance the date stamp.

MR. ANDERSON: No further questions.

Richard A. Liguori  
Deponent

THE STATE OF NEW HAMPSHIRE)  
COUNTY OF Hillsborough) SS.

Subscribed and sworn to before me this 13th  
day of May 1976.

Marilyn C. Trapalis  
Notary Public

Marilyn C. Trapalis

Commission Expires 12.12.1980

EXHIBITS

<u>No.</u>	<u>Page</u>	<u>Description</u>
60	3	Notes-meeting in New York with I. Kahn, TelePrompter Corporation; R. Baer, L. Rubin and L. Ettlinger - February 19, 1968.
61	10	File history of abandoned patent, Serial No. 697,798.
62	10	File history of Patent No. 3,728,480.
63	38	April 27, 1970, letter from Seligman to Swedish associate.
64	71	Memo from Keiran to Matthews of December 8, 1969, with attached purchase order of November 3, 1967.
65	71	Paper received from Green by Seligman on Space War.
66	73	Tape No. 820.
67	73	Tape No. 890.
68	73	Paper tape.
69	73	Paper tape.
70	73	Paper tape.
71	77	Paper from File D-2401.
72-1 and 72-2	78	Drawing of French patent from File D-2401.

(Continued)

EXHIBITS (Continuation)

<u>No.</u>	<u>Page</u>	<u>Description</u>
73	81	June 24, 1970, letter from Seligman to Swedish associate.
74	81	September 12, 1972, letter from Seligman to German associate.
75	83	January 4, 1973, letter from Seligman to German associate.
76	84	July 6, 1973, memo from Seligman to Ettlinger.
77	85	January 7, 1974, letter from Seligman to Japanese associate.
78	87	January 8, 1975, letter from Seligman to German associate.
79	107	December 30, 1970, letter from Seligman to English associate.
80	108	Amendment to official action filed December 10, 1971, in Canadian Patent Office.
81	109	December 27, 1971, letter from Seligman to Swedish associate.
82	110	May 31, 1972, letter from Seligman to German associate.
83	111	September 13, 1972, letter from Seligman to Canadian associate.
84	111	October 6, 1972, letter from Seligman to German associate.
85	112	November 2, 1972, letter from Seligman to Swedish associate.

(Continued)

EXHIBITS (Continuation)

<u>No.</u>	<u>Page</u>	<u>Description</u>
86	113	April 26, 1973, letter from Seligman to Dutch associate.
87	114	June 1, 1973, letter from Seligman to Australian associate.
88	114	August 21, 1973, letter from Seligman to Argentine associate.
89	115	January 4, 1974, letter from Seligman to Japanese associate.
90	116	February 26, 1974, letter from Seligman to Argentine associate.
91	116	May 21, 1974, letter from Seligman to Mexican associate.
92	117	February 27, 1975, letter from Seligman to Dutch associate.
93	128	June 25, 1972, letter from Seligman to German associate.
94	130	July 5, 1972, letter from Seligman to German associate.
95	131	September 27, 1972, letter from Seligman to Israel associate.
96	131	November 2, 1972, letter from Seligman to Swedish associate.
97	132	January 3, 1973, letter from Seligman to Swedish associate.
98	133	July 12, 1973, letter from Seligman to Dutch associate.

(Continued)

EXHIBITS (Continuation)

<u>No.</u>	<u>Page</u>	<u>Description.</u>
99	134	March 26, 1975, letter from Etlinger to Dutch associate.
100	134	May 21, 1975, letter from Seligman to Williams.
101-1	156	January 25, 1971, letter from Seligman to Swedish associate.
101-2	156	February 18, 1971, letter from Swedish associate to Sanders.
101-3 through 101-7	156	Translation of French Patent No. 1,180,470 published June 4, 1959, from Swedish associate.